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INTERSTATE COMMERCE COMMISSION.

Hon. MARTIN A. KNAPP, of New York, Chairman.

Hon. JUDSON C. CLEMENTS, of Georgia.

Hon. CHARLES A. PROUTY, of Vermont.

Hon. JOSEPH W. FIFER, of Illinois, to December 31, 1905.

Hon. FRANCIS M. COCKRELL, of Missouri.

Hon. FRANKLIN K. LANE, of California, from June 29, 1906.

Edward A. Mosley, *Secretary*.

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 748.

GALLOGLY & FIRESTINE

v.

CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY.

Decided April 24, 1905.

1. A case before the Commission involving violation of the Act to regulate commerce through alleged discrimination in furnishing cars, and for which reparation is demanded, is not barred under section 9 of the Act by the previous institution in a state court of a suit for damages between the same parties, based upon such discrimination.
2. Defendant's refusal to furnish to complainants cars for interstate shipments of corn from Leipsic, Ohio, while it contemporaneously furnished to complainants' competitors cars for like shipments, was unlawful discrimination.
3. Evidence relating to damages found unsatisfactory and inconclusive, and complainants allowed until May 20, 1905, to apply for further hearing in respect thereto.

A. A. Slaybaugh and *Bailey & Bailey* for complainants.
R. D. Marshall and *A. McL. Marshall* for defendant.

REPORT AND OPINION OF THE COMMISSION.

FIFER, *Commissioner:*

P. W. Gallogly and R. C. Firestine, partners doing business under the firm name of Gallogly & Firestine, instituted this proceeding against the Cincinnati, Hamilton & Dayton Railway

Co. Their petition alleges that the Act to regulate commerce has been violated by the defendant in this that the latter refused and neglected to furnish cars to the complainants for the transportation of grain, while at the same time it furnished cars to complainants' competitors for the transportation of that product.

The complainants further declare that, by reason of such refusal and neglect to furnish them cars, they suffered damage in the sum of three thousand dollars, through loss of profits caused by their inability to fill contracts.

The Cincinnati, Hamilton & Dayton Railway Co., in its answer, denies every material charge, and especially denies that, during the period between the date on which the petition alleges the defendant first refused to furnish the complainants cars for grain loading and the date of the filing of the petition with this Commission, it refused and neglected to furnish them cars for loading with grain; and asks that the petition and complaint be dismissed.

Facts.

The firm of Gallogly & Firestine were, during a portion of the years 1903 and 1904, engaged in the purchase and shipment of grain, hay and straw at Leipsic, Ohio. They owned no elevator and consequently were what are called track loaders, that is, they loaded from wagons into the cars.

The Wayne Grain & Milling Co., J. A. Snyder and A. Ringline were also engaged in buying and shipping grain, hay and straw at Leipsic, loading cars through elevators. Complainants did a large proportion of the grain trade. One witness, Jerry Stewart, testified that, when complainants could get cars, they had practically all of the grain trade.

There is no dispute as to the fact that, previous to Nov. 23, 1903, the defendant company furnished complainants cars as ordered for the shipment of grain. In respect to the charge made by the complainants that on and after Nov. 23 of that year the defendant refused and neglected to furnish complainants cars for grain, there is a sharp conflict in the testimony.

P. W. Gallogly, one of complainants, testified that, on or about the 23rd of November, 1903, he applied for cars to Mr.

Madigan, agent of the defendant company at Leipsic; that the agent told him, Gallogly, that he could not furnish complainants any more cars for grain loading until he received further orders from the superintendent of the company, who, he said, had ordered him not to supply to the firm any more cars for grain shipments, but to furnish such cars as might be required for shipping hay.

At this time, Nov. 23, the complainants had on wagons ready to load into cars corn which they had purchased and which they had contracted to sell, and which was to be delivered to purchasers in other localities. Gallogly says at this time he made application for cars and asked Madigan if the firm could load one of five or six empty box cars standing on the sidetrack, whereupon Madigan replied: "No; you can load with hay if you wish but not with corn." At this time, Gallogly told Madigan that, if the firm were permitted to load a car they would consign it to a point on the Cincinnati, Hamilton & Dayton road or to some other point to which the car would under the rules of the company be permitted to go.

Previous to Nov. 23, complainants had been furnished with all the cars they required for grain loading, and they make no complaint respecting their car supply previous to that time. After this refusal, they were never furnished any cars for grain, but continued to load cars with hay. After Nov. 23, they loaded one car with grain and hay, mixed. This car, however, was received for hay loading only. Between Nov. 21, 1903, and some time in December of that year, complainants asked for cars for grain, every day, but none were furnished them.

Gallogly further testified that, when he asked Madigan for cars for grain loading, the latter said the superintendent had ordered him not to let complainants have any cars for grain; and had instructed him that he must protect the elevators. Madigan further said, it is alleged, that the association had knocked complainants out. The owners of the elevators, it should be noted, were competitors of complainants in the purchase and sale of grain at Leipsic.

According to the testimony of this witness complainants demanded cars for grain shipments to the following markets;

namely, Wellston, Jackson, Nelsonville, Malinta, Hoytsville, Gilboa, and Wheeling, W. Va. These places are all within the State of Ohio, except the latter, and there is nothing in the record to show how much grain was to be delivered at Wheeling for which cars had been demanded. Nor is there anything any more definite to be found in the record on this subject than what is here stated.

The foregoing is substantially the testimony of the complainant, Gallogly.

Gallogly's testimony as to the refusal of cars by Agent Madigan is corroborated by that of Oda Ernest and J. D. Kober, both of whom were at the time delivering grain in wagons on the track to complainants.

Ernest testified that Madigan said to Gallogly on Nov. 24, 1903, that he was authorized to refuse to furnish complainants any cars for grain loading, but that complainants could have all they wanted for hay and straw; that furnishing cars for grain "interfered with the association." On Nov. 23 of the same year Kober heard Madigan say to Gallogly: "Gallogly, the association knocked you out. The superintendent won't furnish you any more cars for grain, but you can get all you want for hay." On this occasion Gallogly and Kober had gone to see Madigan to get a car for corn. There were five or six empties on the siding at the time. Madigan said Gallogly could load them with hay if he chose, but not with grain. Kober had agreed to sell complainants about 2000 bushels of corn and had delivered about 600 bushels, leaving 1,400 bushels which could not be accepted because no cars were obtainable.

R. C. Firestine, of the complainant firm, testified that on Nov. 28, 1903, Madigan offered the firm one car for corn. Madigan said on this occasion: "I will let you have this car on my own responsibility. I have no authority from the company to do it. They told me to refuse you any cars for grain, but I will let you have this corn car on my own responsibility." This car which Madigan agreed to furnish, it should be noted, was owned by a foreign road and the presumption seemed to be that the agent desired to have it returned to the road to which it belonged; and it further appears that the offer of this car is what

caused Gallogly to write the letter hereafter referred to in these findings of fact.

J. J. Madigan, agent of the defendant company at Leipsic, testified that, on and after Nov. 21, 1903, when Firestine asked for cars, the latter did not say for what loading they were wanted; that he told Firestine that he would try to get the cars; that the superintendent told him to furnish the cars, saying nothing about what they should be loaded with, whether grain or hay. Madigan did not remember ever having made a statement that the superintendent had forbidden him to let complainants have cars for corn only. He further testified that he had never refused complainants cars for corn and that no officer of the railway company ever told him not to furnish cars to complainants.

Madigan also testified that, about Nov. 23, 1903, Gallogly & Firestine brought suit against the railway company for damages resulting from the alleged refusal to furnish cars, and a few days later when he (Madigan) offered them a car for corn the complainants said they did not want to accept it then, as they did not wish to prejudice their suit for damages growing out of this transaction.

Madigan admitted that complainants went to him for cars for corn two or three times between Nov. 23, 1903, and March 8, 1904, but said that he had no cars that he could spare them at these times, and that the cars on the siding on Nov. 23, 1903, when they asked for cars, were there on requisitions by other shippers to be loaded with merchandise.

S. B. Floeter, superintendent of the defendant railway company testified that there was no discrimination against the complainants in the furnishing of cars. This witness claimed that from Sept. 1 to Nov. 30, 1903, 75 cars were loaded with grain, hay, etc., at Leipsic, of which complainants loaded 46.66%. Floeter told Madigan that Gallogly & Firestine were getting more than their proportion and that their competitors had a right to a just share; also that Leipsic was getting more cars than other similar points. At that time the defendant railway was furnishing only 35 to 40% of cars required by their customers along their line owing to car shortage. Floeter

further testified that no order was ever sent out from his office directing that no cars be delivered to complainants for shipping grain.

C. F. Waldo, General Manager of the defendant company, testified that he never ordered any subordinate to discriminate against Gallogly & Firestine in the distribution of cars. There was a car shortage in October, November and December, 1903, and Waldo thought that, during that period, he had ordered that the company's own local cars be not loaded except to certain territory.

Jerry Stewart, foreman of the Wayne Grain & Milling Co., at Leipsic, one of the competitors of Gallogly & Firestine, who had charge of the loading of cars for the Wayne Co., testified that, on and after Nov. 21, 1903, his company, which shipped grain, had received cars from the defendant for grain loading; and that the agent of that road had never refused them cars. The company shipped grain from their elevator between Nov. 21, 1903, and April 24, 1904. They could not always get cars promptly when they wanted them, having to wait, sometimes, two or three days, occasionally a week. This company loaded from elevator.

From Exhibit "C," which is made a part of the record, being a list made by Agent Madigan of the defendant company, showing shipments of grain, hay and straw from Leipsic, it is seen that, subsequent to Nov. 21, 1903, and in the period during which complainants allege the defendant refused them cars for grain shipment, the Wayne Grain & Milling Company shipped over defendant's road two cars of corn and J. A. Snyder & Co. five cars of corn.

On Nov. 21, 1903, when, it is alleged, the defendant railway refused complainants cars for grain, the latter had, according to complainants' testimony, about five thousand bushels of corn contracted for track delivery at Leipsic. Some of the persons from whom this corn had been purchased had commenced to deliver it before complainants could notify them that cars could not be secured, and, on Nov. 23, complainants by reason of inability to secure cars were compelled to have about a carload of corn unloaded from wagons into barns. Gallogly, as soon as

possible, gave notice to those with whom the firm had purchase contracts not to deliver any more of the corn for the reason that his firm could not obtain cars in which to load it. The date of this notification, however, does not appear in the record.

The complainants had a market for all the corn for which they had contracted, having sold ten to fifteen carloads in advance. These orders, they contend, they were unable to fill because cars were refused them, by which inability to receive and ship the corn, they lost the profit upon the amount which they had contracted to deliver, and, in addition, lost considerable other trade. The average profit on a car of corn at that time was, according to complainants' testimony, from $25 to $40 on car containing 600 to 750 bushels. Up to the time when complainants say the railway refused cars for grain, the complainants had bids every day for grain and made sales on accepted bids, from time to time. The amount of grain sold in this way is not shown in the record; nor does it show with clearness to what points the grain was to be delivered.

The partnership of Gallogly and Firestine was formed some time in 1903 and was in existence Nov. 21, 1903.

Damages for non-delivery of the contracted corn were demanded by the purchasers of the grain and complainants settled some of the claims by buying corn at places other than Leipsic and filling the orders with it, which cost them more than the price they had agreed to pay for the contracted corn. Here again the record is incomplete, failing to show the amount of damages resulting to complainants in this regard.

On Nov. 24, 1903, Gallogly & Firestine brought suit for damages on account of the alleged refusal of the railway to furnish them grain cars, in the Court of Common Pleas of Putnam County, Ohio. The firm was dissolved on March 8, 1904, and the proceedings before this Commission were begun on April 15, 1904.

The following is a copy of a letter written to James Madigan, agent of defendant at Leipsic, Ohio, by Gallogly & Firestine, which letter appears in the record as Exhibit "A;" and, as before stated, was doubtless prompted by the offer of the one car heretofore alluded to:

Leipsic, O., Nov. 28, 1903.

James Madigan,
Station Agent, Cincinnati, Hamilton & Dayton Ry. Co.,
Leipsic, O.

Dear Sir:

Since we commenced a suit in the Court of Common Pleas of Putnam County, Ohio, against the Cincinnati, Hamilton & Dayton Railway Company et al., on Nov. 24th, 1903, you have offered to furnish us cars for immediate use in shipping ear corn from Leipsic, but in connection with such offer you have said to us that this offer was made by you without any authority from any of your superiors in the railway service.

And upon inquiry by us you have declined to state whether any other cars would hereafter be furnished us for shipping ear corn beyond those thus offered for immediate use.

In view of the fact that we had thus commenced suit before this offer was made by you and after you had refused us cars upon the authority of your superiors, as you stated at the time of such refusal, and in view of the further fact that this offer does not include any settlement of or compensation for damages already accrued to us, and in view of the further fact that you had as you say no authority to make the offer to furnish certain cars before stated, and in view of the further fact that you did not have any authority to state the future intentions of the Cincinnati, Hamilton & Dayton Railway Company concerning the furnishing of such cars from time to time as we may need in our business, we feel that we cannot abandon our suit against your company and damages already accrued, for the immediate use of one, two or three cars.

If your company is prepared to declare its intention to accommodate us from time to time with such cars as we may need from this time on, when it is able to furnish the same, and treat us in this respect as well as it treats other warehousemen and track loaders, we will gladly take up with your company and consider and dispose of all the matters involved in the suit hereinbefore mentioned, in the hope that your company will from this time on treat us fairly and as well as it treats other shippers of merchandise and farm products.

We do not feel that we can, however, in exchange for the immediate use of one, two or three cars, without any understanding or hope for the future, abandon the case we have heretofore commenced.

Respectfully,
(sd) Gallogly & Firestine.

All the testimony in this case was taken by deposition by the attorneys of the respective parties.

CONCLUSIONS.

We do not agree with the contention of counsel for the defendant that complainants should not be permitted to pursue their claim for reparation before this Commission by reason of the fact that, previous to the commencement of these proceedings, they instituted a suit in the State court of Ohio for damages growing out of these same transactions; which suit is pending in the courts of that state. If the suit in question was pending either in the district or circuit court of the United States the position of counsel would be well taken, and this proceeding would doubtless have to be discontinued; but this is not the case, and we see no reason why complainants have not the right to pursue their remedy before this Commission if they see fit to do so.

It seems to us it is fairly well established that after Nov. 23, 1903, defendant neglected and refused to furnish cars to complainants for the shipment of grain from Leipsic, Ohio, when it might reasonably have done so; and that it at the same time discriminated against complainants by furnishing cars to complainants' competitors engaged in the same line of business at that place. Respecting this point, however, there is some conflict in the testimony, but, in our judgment, it greatly preponderates in favor of the complainants.

Complainants both testified that on and after the time in question they applied to the agent of defendant company at Leipsic for cars for grain shipments and were refused, the agent saying that he had been directed by the officers of the company not to furnish complainants with any more cars for grain shipments,

but that complainants could have all the cars they desired for hay and straw. They swear that the agent further stated that the "association had knocked them out." Who constituted the association does not clearly appear. Presumably reference was had to the rivals of complainants at Leipsic, all of whom did business through elevators at that place.

The testimony of complainants on this question is corroborated by Oda Ernest and John Kober, disinterested witnesses who were delivering grain upon the track to complainants, and who went with Gallogly to see the agent for the purpose of securing cars for grain shipments. Both of these witnesses testified that the agent refused to furnish cars, and in all material respects they corroborated the testimony of complainants on this subject.

Nobody disputes the foregoing testimony except the agent himself. It is true, the division superintendent and the general manager of defendant company say they never instructed the agent at Leipsic not to supply complainants with cars for the shipment of grain. This may all be true; and yet it does not contradict complainants' testimony on this question. The agent represented the defendant at Leipsic, and defendant is bound by what its agent said and did in the business of furnishing cars. If he misrepresented the officers of the company, that fact can in no wise affect the rights of complainants. That it was the declared purpose of defendant to refuse complainants cars for grain shipments, after Nov. 23, seems reasonably clear. Whether it did so refuse by reason of the delays incident to track loading or whether the officials of the company were unduly influenced in their conduct by the rivals of complainants, it is not necessary to inquire.

On Nov. 24, 1903, complainants brought suit against defendant in the State court of Ohio for alleged damages resulting from these transactions. Soon thereafter the agent offered complainants a car for grain shipment, which he said he would furnish on his own responsibility. This car, it appears, was a foreign car, and it seemed to be the desire of the agent to get it back to the company to which it belonged. Upon the offer of this car complainants wrote the agent the letter which appears in the

findings of fact, and which bears date Nov. 28, 1903. In this letter complainants not only declined the car in question, but seemed disposed to refuse all cars for grain shipments until a settlement was made of the damages for which complainants had sued in the court of Ohio. This, it seems to us, is a fair interpretation of the letter in question. The refusal seems to be much broader than the offer, and, in our judgment, amounts to a withdrawal of its previous request for cars. In the view we take of the case, complainants had no right to demand a settlement of their claim for damages as a condition precedent to their acceptance of cars tendered to them in the regular course of business. We are inclined to hold, however, in view of all that was said and done, that the demand for cars was renewed soon after the date of this letter. Gallogly, one of the complainants, testified that they demanded cars right along through the remainder of November and up into December until they became tired; and that cars were refused them. The agent, Madigan, admits that complainants, from Nov. 23 down to about March 1 of the following year, demanded cars for grain shipments from two to three times, but that he did not have the cars to fill the orders. It seems, however, from the testimony of the witness, Stewart, defendant was furnishing to the Wayne Grain & Milling Co. cars for the shipment of grain after Nov. 23 down to May, 1904. An exhibit appearing in the record, which was offered by defendant, corroborates the testimony of Stewart in this regard.

We feel justified, therefore, in holding as we do that immediately after the date of the letter in question the complainants renewed their application for cars for grain shipments, and that they continued these applications down to or about the time of the dissolution of the firm. We find also that these applications were refused by defendant, and that the defendant could, at the several times, have complied with such demands if it had desired to do so; and we further hold that at the several times when cars were demanded and refused defendant was furnishing cars to complainants' rivals for grain shipments.

This brings us to the only remaining question calling for consideration; namely, were complainants damaged by the refusal of defendant to furnish them cars for grain shipments at the

times in question, and, if so, to what extent? There is no evidence whatever in this record showing that the general business of complainants suffered damages by reason of any refusal of cars as is alleged by them in their complaint. Nor is there sufficient evidence in the record to justify a finding of reparation respecting the grain purchased by complainants and which doubtless they would have shipped had they not been prevented from so doing by their inability to secure cars. The evidence in this behalf is very unsatisfactory and inconclusive. It is true, the record shows that complainants had purchased about 5,000 bushels of corn which they intended to ship, and that they received a profit of from $25 to $40 upon each car of corn sold where the loading was 600 to 750 bushels per car. It does not appear, however, that complainants had sold corn to be delivered to any market outside of the State of Ohio, except Wheeling, W. Va. Neither is there any testimony showing how much grain was sold to Wheeling, nor the amount it was intended to ship to that place. There is nothing to show whether the amount was 10 bushels or 5,000 bushels. It will be seen from the finding of facts that complainants had contracted to deliver corn at six different points within the State of Ohio, and presumably the bulk of complainants' shipments were destined for these points.

The Commission has no control over traffic moving wholly within a single state, nor has it any power to award reparation for discrimination affecting such shipments. In this case the only shipments mentioned in this record over which the Commission has any control were the contemplated shipments from Leipsic to Wheeling, and, as we have seen, there is nothing to show how much grain was intended for Wheeling; which fact renders it impossible for us to award reparation as demanded in the complaint.

This proceeding will be held open with leave to complainants to apply for a further hearing for the purpose of supplying the defects in this record respecting the damages, if any, sustained by them by reason of the discriminations complained of. If application is not made for that purpose on or before May 20, 1905, the complaint will be dismissed.

No. 746.

IN THE MATTER OF DIFFERENTIAL FREIGHT RATES TO AND FROM NORTH ATLANTIC PORTS.

Decided April 27, 1905.

Rates on freight articles from the West to Baltimore, Philadelphia and Boston are adjusted according to the following differentials below or above the rates to New York: Domestic traffic—3 cents less to Baltimore and 2 cents less to Philadelphia; 7 cents, first class, to 2 cents, sixth class, more to Boston. Export traffic—same as domestic traffic to Baltimore and Philadelphia, except on grain and iron and steel articles, which are 1½ cents less to Baltimore and 1 cent less to Philadelphia; same rates to Boston as to New York on this traffic. On ex-lake grain received at Buffalo, Fairport and Erie, there is, pending the disposition of this case, a differential in favor of Baltimore of 4/10 of a cent per bushel below the rate to New York, but no differential in favor of Philadelphia. It was contended by New York and Boston that the differentials favoring Baltimore and Philadelphia should be abolished. Upon voluntary submission of the controversy to the Commission by all parties, domestic traffic was excluded from consideration. For reasons stated no opinion is expressed concerning the relative rates on import traffic. With respect to export differentials,—

Held: 1. That the differential per 100 pounds on flour, all-rail and lake and rail, should be reduced to 2 cents at Baltimore and 1 cent at Philadelphia. 2. That the existing differential on ex-lake grain should be reduced to 3/10 of a cent per bushel and be allowed both to Baltimore and Philadelphia. 3. That otherwise the present export differentials should remain in force.

John G. Carlisle, Ben. L. Fairchild and *Abel E. Blackmar* for New York Commercial Interests.

C. S. Hamlin for Boston Commercial Interests.

Silas W. Pettit for Philadelphia Commercial Interests.

Arthur Geo. Brown, John B. Daish, A. C. Trippe, and *J. McC. Trippe* for Baltimore Commercial Interests.

Nathan Guilford for N. Y. C. & H. R. R. R. Co.

Geo. V. Massey, Francis I. Gowen and *John B. Thayer, Jr.,* for P. R. R. Co.

Hugh L. Bond and *John G. Wilson* for B. & O. R. R. Co.

J. D. Campbell and *Chas. Heebner* for P. & R. Ry. Co.

Geo. F. Brownell for Erie R. R. Co.

Walter W. Ross and *B. D. Caldwell* for D., L. & W. R. R. Co.

F. H. Janvier and *Frank H. Platt* for L. V. R. R. Co.

John B. Kerr for N. Y., O. & W. Ry. Co.

R. W. DeForest for C. R. R. of N. J.

E. L. Somers for N. Y., N. H. & H. R. R. Co.

Edgar J. Rich for B. & M. R. R.

C. A. Hight for G. T. Ry. System.

G. M. Bosworth for C. P. Ry. Co.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

In the early part of 1904 the rate on wheat from Buffalo to the various Atlantic ports for export had fallen to two mills per bushel. This was owing to the existence of a rate war between the lines leading from Buffalo to Baltimore, Philadelphia, New York and Boston, growing out of a dispute between those lines as to the proper relative rates to those various ports. There was very little wheat at Buffalo which could move under these rates and the practical effect of the tariff during the winter and early spring was not serious, but, as the opening of navigation approached, it became evident that this condition, if it continued, would lead to a general demoralization of grain rates in all parts of the country, which would in turn unsettle commercial and industrial conditions so far as they related to the handling of grain, and especially to the manufacture and distribution of the products of grain. For this reason business interests both upon the seaboard and at interior grain handling and milling points were anxious that some adjustment should be reached, and to this end the commercial organizations of Boston, New York,

Philadelphia and Baltimore applied by petition to this Commission, asking that it examine the whole subject of differential rates to and from these four cities and determine whether the present differentials should be abolished, or, if retained, modified.

It seemed to us that the gravity of the situation at least justified a full investigation. A proceeding of inquiry was accordingly instituted April 11, 1904, and hearings were held at New York, Philadelphia and Washington. The commercial interests of these cities, together with those of Boston, assumed the burden of conducting the proceedings, but many organizations at various interior points were represented, as well as all of the railway lines involved. Nearly three thousand pages of typewritten testimony have been taken, a great number and variety of exhibits have been introduced, and extended written and oral arguments have been made. We are now required to examine this record with a view to expressing some opinion in the premises.

The order of the Commission was sufficiently broad to include the application of these differentials to all kinds of traffic to and from the several ports, but by agreement at the opening of the first hearing the inquiry has been limited entirely to export and import traffic. The question presented is not a new one and perhaps there is no way in which the exact nature of that question can be better understood than by a brief résumé of what has already occurred.

The development of our agricultural resources in the West has for many years produced a large surplus of grain over that required for domestic consumption and this grain has sought a market in European countries. In the early 70's most of the commerce between the United States and Europe was through the four ports involved in this proceeding, more especially through New York. The New York Central lines reached Chicago in 1852; the Erie and Pennsylvania soon afterwards, and, in 1874 the Baltimore & Ohio first entered Chicago over its own rails. This grain could be transported through any one of the four ports and the port of export determined the rail line which should carry it to the seaboard. The Erie and New York Cen-

tral served New York primarily; the Pennsylvania, Philadelphia, and the Baltimore & Ohio the port of Baltimore.

Mr. Fink states in his report, which is subsequently referred to, that in 1881 seventy-three per cent of the entire tonnage carried by these lines of railway from the West to these four cities was grain, and this percentage must have been even larger ten years before. The distribution of that traffic between the different lines was, therefore, a matter of the greatest consequence to these railways and seems to have been from the first a source of bitter controversy. The Baltimore & Ohio insisted that the distance to Baltimore was much less than to New York and that for this reason the rate should be lower. It also seems to have been true, in those days, that the ocean rate from Baltimore and Philadelphia was much higher and the ocean facilities much poorer than from New York. To obtain, therefore, a part of this traffic it was essential that the inland rate should be lower to Baltimore and Philadelphia than to New York.

The first differential of which we have any accurate account was ten cents per one hundred pounds, but this seems to have been reduced as early as 1870 to five cents per hundred on grain. The New York lines insisted that even this was too great and finally, after numerous rate wars, an agreement was made in 1876 that rates to Baltimore, Philadelphia and New York should be established upon the basis of actual distance from the point of origin to the several ports. This agreement continued in effect only six weeks, the New York lines withdrawing at the end of that period upon the ground that the rates so established were unduly favorable to Baltimore and Philadelphia.

Another period of rate disturbance now ensued which was terminated by an agreement dated April 5, 1877. This agreement was in writing and was signed by the New York Central, the Erie, the Pennsylvania and the Baltimore & Ohio. Considerable discussion has arisen in the course of this investigation as to the proper mode of establishing these differentials. The New York and Boston interests contend that the inland rate should be so adjusted that when combined with the ocean rate the through rate from the point of origin to the point of destination will be the same through all the ports, while Baltimore and Philadel-

phia insist that this method of rate adjustment would be unfair to those localities. As bearing upon this, the view which was taken of this matter in the earlier days of the controversy is interesting. The first paragraph of the agreement may be cited:

> "To avoid all future misunderstandings in respect to the geographical advantages or disadvantages of the cities of Baltimore, Philadelphia and New York, as affected by rail and ocean transportation, and with the view of effecting an equalization of the aggregate cost of rail and ocean transportation between all competitive points in the west, northwest, and southwest, and all domestic or foreign ports reached through the above cities; it is agreed:"

This agreement provided that export rates to Boston should be no higher than those to New York; that rates to Philadelphia should be two cents, and to Baltimore three cents per one hundred pounds lower than to New York upon all classes and commodities. The above extract shows that the purpose of the signatory parties was to produce the same through rate via all the ports and that these differentials were established upon the theory that they would produce this effect.

The agreement of 1877 provided that any one of the parties might withdraw by giving three months' notice, and in the year 1880 this notice was given by the New York Central. A period of disturbance again ensued and the matter seems to have been referred for solution to Albert Fink, Commissioner of the trunk lines, who made an elaborate report. This report of Mr. Fink's is a most luminous discussion of the entire subject and must be a classic to every one interested in this problem. His conclusion was that there should be a lower inland rate to Baltimore and Philadelphia than to New York, but that it was impossible to say with any certainty what the differentials ought to be or what their effect upon properly competitive traffic was. He recommended that the lines seek to divide this traffic at its source rather than attempt to control it by differential rates.

The report of Mr. Fink does not seem to have settled the controversy and in the spring of 1882 the whole subject was referred

to the arbitration of Senator Thurman, ex-Senator Washburne and Judge Cooley. This board, known as the Advisory Commission, organized soon after its appointment and proceeded to hear statements and arguments at the various ports and also at different inland points. Its report, made July 20, 1882, stated that distance could not be relied upon to determine these differentials, nor could cost of service be made the test. The opinion was expressed that some differential must be accorded Baltimore and Philadelphia and that the proper measure of that differential was the actual result of competition. Since competition, acting through several years, had brought about the differentials then in force the Commission recommended that they should be observed for the present.

The agreement of 1877 had been intended, as already seen, to equalize the rates through the different ports, the lower inland rate being supposed to correspond to the higher ocean rate. The New York lines withdrew from this agreement upon the plea that while ocean rates had been distinctly higher from Baltimore and Philadelphia in 1877, they had become in 1880 practically the same.

Both Mr. Fink and the Advisory Commission found that ocean rates were higher from Baltimore and Philadelphia than from New York and attached much importance to this fact, but a careful reading of these reports apparently shows that in the opinion of their authors difference in ocean rates was not the only factor which should be considered, partly for the reason that it was impossible to determine exactly what the ocean rate was, and partly because the thing to be equalized was not the rate but the advantages of transportation through the several ports.

The various differentials in effect at the time of the award of the Advisory Commission have for the most part continued down to the present day and we may conveniently state at this point what these are.

As already said, rates upon export traffic through the port of Boston have always been and now are the same as those through the port of New York. Domestic rates have been and are higher to Boston than to New York. In 1882 these differentials on

domestic traffic to Boston were, in cents per hundred pounds, upon the various classes:

Classes	1	2	3	4	5	6
Differentials	10	6	5	5	5	5

In 1892 complaint was made to the Interstate Commerce Commission that these differentials were excessive. The Commission after hearing ordered them reduced, *Kemble* v. *Lake Shore & Michigan Southern Ry. Co.,* 5 I. C. C. Rep. 166, and in August of that year the following differentials were established and are now in effect:

Classes	1	2	3	4	5	6
Differentials	7	6	5	4	3	2

Commodity rates are in general two cents above the corresponding rate to New York.

Both export and domestic rates were in 1882 on all classes and commodities two cents per one hundred pounds lower to Philadelphia and three cents per one hundred pounds lower to Baltimore than to New York. These differentials continued in effect from 1882 down to 1897 without any formal attempt to alter them. While the rates themselves were not generally maintained and while the differentials were not always recognized, they stood upon the published tariff. In 1897 the New York Produce Exchange filed with the Interstate Commerce Commission a petition against the Baltimore & Ohio Railroad Company, and other lines, alleging that the effect of these differentials was an undue discrimination against the locality of New York. The complaint was investigated at great length and elaborately discussed by the Commission in its report. The conclusion arrived at was that while the differentials might be unfair as between the different railway lines interested or, possibly, as between the communities themselves, they were not in principle a violation of the Act to regulate commerce and had not resulted in such an effect upon the movement of traffic as would justify the Commission in pronouncing them an undue preference against the port

of New York. This case is reported in 7 I. C. C. Rep. 612, and may be referred to for a fuller discussion of the questions involved than will be attempted in this connection.

The differentials in effect in 1898, when the report in the above case was promulgated, were the same that they had been in 1882, but in February, 1899, differentials on export grain were reduced one-half, and in 1904 export rates on iron and steel articles were materially reduced to stimulate foreign consumption of our surplus production, and in that connection the differentials on this traffic were also cut in two. Domestic differentials on grain and iron articles were not affected and are still two cents at Philadelphia and three cents at Baltimore.

Upon westbound traffic the same differentials have been in effect since tariffs were first filed with the Commission in 1887. Rates are in cents per one hundred pounds less from Philadelphia and Baltimore than from New York, as follows:

Classes	1	2	3	4	5	6
From Philadelphia	6	6	2	2	2	2
From Baltimore	8	8	3	3	3	3

From Boston, westbound, rates are the same as from New York

The main controversy before us is over the eastbound differentials upon export traffic. Baltimore and Philadelphia insist that they are entitled to these differentials on the score of location. They urge that they are nearer the points of origin of this traffic than is New York and that for this reason they should have a lower inland rate.

The territory to which these differentials apply is bounded on the East by a line from Buffalo to Pittsburg; on the South by the Ohio River; on the West by the Mississippi River, and on the North by the Great Lakes and a line running from Chicago nearly due west to Dubuque, Iowa. In making rates between points in this territory and the cities in question Chicago is treated as a base. Other points take either the same rate as Chicago or one which is a certain per cent above or below. Thus the rate from Indianapolis is 93 per cent and from East St. Louis 116 per cent of the Chicago rate. The Pennsylvania Railroad is the short

line from Chicago to New York, Philadelphia and Baltimore, the distances by that line being as follows:

To New York	912 miles.
To Philadelphia...........	822 miles.
To Baltimore.............	801 miles.

It is plain, however, that this traffic does not all originate at Chicago; indeed, comparatively little of it actually originates there although large quantities pass through Chicago and Chicago junctions. It does not, therefore, necessarily follow that Chicago would be a fairly representative point in estimating the distance from points of origin to the seaboard. Wherever the Pennsylvania road is the short line to New York the distance to Philadelphia must be ninety miles less, since in all cases the traffic passes through Philadelphia by that line en route to New York. In most cases where the Pennsylvania is the short line to New York it is also the short line to Baltimore. These differentials apply not only to traffic originating within the territory above described, but to all traffic passing through that territory on its way to the seaboard. When the location of these different lines of railway is examined we think it must be found that while considerable of this traffic may originate as near to New York as to Philadelphia or Boston, in case of much of it the difference in distance is even greater, especially in favor of Baltimore, than would be expressed by the relative distances from Chicago and it is sufficiently favorable to the port of New York to find that Chicago is fairly representative in this respect of the various points of origin.

Whether these differences in distance would justify a difference in rate of two cents in favor of Philadelphia and of three cents in favor of Baltimore, if the rates were determined without reference to competitive export conditions, is not altogether clear. Such differences would naturally be greater upon the higher classes which bear higher rates and less upon the lower classes. Baltimore introduced testimony tending to show that on the basis of distance the present rates did not give that locality anything like the advantage to which it was entitled. It must be remembered, however, that rates do not ordinarily increase in

the same proportion as distance increases. If the distance from Chicago to Baltimore is 12.2 per cent. less than to New York, it by no means follows that the rate to Baltimore should be lower by the same per cent. Without attempting to examine this question in detail, we are rather of the opinion that the differentials now prevailing on domestic traffic are not greater than they should be if made to Baltimore and Philadelphia as strictly local destinations. Westbound differentials from Baltimore and Philadelphia are the same on the lower classes, and somewhat more on the higher classes than these eastbound differentials.

It must be evident that distance is properly regarded as a factor in rate-making, mainly because it is supposed to express difference in the cost of service. Other things being equal it costs more to haul traffic 1,000 miles than 900, and therefore a higher rate may be properly imposed. Manifestly, however, this is not always the case. The grades by the New York Central lines between Chicago and New York are easier than those by the Pennsylvania and it is quite conceivable that the actual cost of transportation over the longer haul might be less than over the shorter, and in that event New York, while more distant in geographical miles, might be nearer in transportation facilities. Nothing of all that need be considered by us. There is no testimony in this record which attempts to show the relative cost of handling this traffic from Chicago to the different ports and, indeed, as said by the Advisory Commission in 1882, the elements which enter into the determination of that question are so complex and so various as to render it impossible of satisfactory solution.

There is, however, one element of cost which was somewhat insisted upon, viz., the lighterage charges at the port of New York. Export traffic, which need alone be considered in this connection, is usually lightered to the ship's side in New York harbor. Grain, for example, is unloaded from the car into an elevator, from the elevator transferred to a barge, which is then towed to the ship's side and the grain transferred into the hold of the vessel by a floating elevator. At Baltimore, Philadelphia and Boston, the grain is usually loaded directly from the elevator into

the vessel, thereby avoiding the expense of lighterage. The New York rate includes a delivery at the ship's side; the rate to the other ports includes a delivery ordinarily into the elevator. The railroad terminating at New York is therefore compelled to bear the expense of this additional service. Just how much that expense may be does not appear. An allowance of three cents per hundred pounds on all traffic is made to lines terminating at New York on account of lighterage, but it is doubtful whether the expense of lightering grain and other low grade traffic equals that amount.

As already said, the contest in this case is over export and import traffic. The differential is important because it tends to send this traffic through a particular port, and therefore over a particular line of railway. Since the thing in which the exporter or importer is interested is not simply the rail rate to or from the inland port, but the entire through rate, it becomes necessary to examine the ocean as well as the inland portion of this transportation.

As previously noted the agreement of 1877 was with a view of equalizing the entire through rate by all the ports. It was apparently believed at that time that ocean rates from Baltimore and Philadelphia were distinctly higher than from New York, and the inland rate was made correspondingly lower. In 1880 the New York lines withdrew from this agreement, for the alleged reason, as stated above, that this difference in ocean rates no longer existed. Both the Thurman award and the report of Mr. Fink, find, however, that there still were substantial differences in that respect. New York insists to-day that these differences have entirely disappeared. We are asked to say that ocean rates from Baltimore and Philadelphia are practically the same as from New York and to conclude that, therefore, inland rates to the several ports should also be made equal.

The most superficial consideration of the subject must show the impossibility of determining exactly the rates by water from these ports to foreign destinations. An ocean rate is much more subject to fluctuation than a rail rate would be even if the Act to regulate commerce did not require the publication and maintenance of the latter. When a ship which is to sail upon a par-

ticular day finds as the time of departure approaches that its cargo is liable to run short, it will accept almost any price for the sake of obtaining a full load. Upon the other hand, if offerings of freight are plenty, it may exact a higher price than it quoted at an earlier period. Hence, it often results, indeed, usually results, that the same ship carries the same commodity at different rates. It also results that ocean rates vary from day to day and even from hour to hour. They are higher from Philadelphia to-day and from New York to-morrow. Nor do the rates actually charged correspond with those quoted. It is, therefore, impossible to find with any degree of confidence what the rates from these different ports have been. Mr. Fink states in his report that for the four years from 1877 to 1880, inclusive, rates to Liverpool had been .98 of one cent per hundred higher at Philadelphia and 1.90 cents higher at Baltimore than at New York. The Advisory Commission found that ocean rates were higher from Baltimore and Philadelphia than from New York by an amount approximating the differentials. When this Commission examined the subject in 1897 large quantities of grain were exported in cargo lots; that is, by vessels carrying no cargo except grain. This business is apparently no longer done to any extent through any of the ports. We found that cargo rates were the same from all the ports; that berth rates were lower at Boston than at New York by an average of perhaps 1 cent per 100 pounds, and that they were higher at Philadelphia and Baltimore than at New York from 1½ to 2 cents per hundred pounds.

A good deal of testimony has been introduced upon this inquiry bearing upon the relative ocean rates from these four points since 1897. This testimony shows that such rates are often lower through the out-ports than through New York and that the reverse is often the case. No sufficient reasons appear why the difference in ocean rates should have been less for the seven years following 1897 than it had been for the seven years preceding, and still the testimony now before us apparently shows that the difference is less to-day than has been found in former investigations. Boston no longer seems to enjoy quite the same advantage as formerly and rates from Philadelphia and Baltimore seem to more nearly equal those from New York. We

are satisfied that the difference is materially less in case of low-class traffic, which is mainly competitive, than the amount of the differentials, and that is about all that can be averred with certainty.

New York and Boston claim that the inland rail differential has been in the past responsible for any difference that may have existed in ocean rates and that if this differential were abolished there would be no difference. In support of this they give evidence touching what is known as the "Minimum Freight Agreement."

In the fall of 1901 it had become evident, in view of the close of the war in South Africa and the prospect of reduced exports from the United States, that a large amount of unemployed tonnage would be thrown upon the market. For the purpose of preventing the consequent demoralization in ocean rates which was feared the owners of steamship lines plying between ports in the United States and Canada, upon the one hand, and Great Britain and Ireland upon the other, fixed a minimum rate at which certain commodities should be transported. This agreement was made and executed in London. It applied, to grain, cotton seed oil and cake, flour in sacks, and bacon and hams.

The minimum rates named on these commodities were the same from all the ports. Since they could be transported to Baltimore and Philadelphia for three and two cents, respectively, less than to New York, the result of the Minimum Freight Agreement in its first form was to make a total through rate via Baltimore and Philadelphia less than via New York and Boston by the amount of the inland differentials. The effect of this was to divert traffic from the two latter ports, and so pronounced was this diversion that steamship agents in the United States representing lines principally interested in Boston and New York protested against its continuance. After investigation and conference the agreement was so modified, taking effect May 26, 1902, that ocean rates from the differential ports were made higher than from New York and Boston by the amount of the inland differential. The effect of this modification was to make the rates through all the ports from points of origin to destination exactly the same.

This agreement provided that parties to it might withdraw a portion or all of their traffic from its operation upon notice, and almost immediately following May 26, lines operating through the differential ports began to give notices of such withdrawal. On June 12, the Johnson Line withdrew tobacco when originating in Virginia and North Carolina; on July 16, certain Canadian traffic through the port of Montreal was withdrawn; on July 30, tobacco, compound lard and the products of cotton seed oil were excepted. On July 9, the Johnson Line, operating to the port of Baltimore, gave notice that it would revert to the original agreement, by which rates were to be the same from all ports, for the alleged reason that under the existing arrangement it could obtain no traffic at Baltimore.

It is not material to continue in detail our examination of the operation of this agreement. Glucose, grape sugar, tobacco, lumber and some other grain products in addition to flour, seem to have been added to those originally embraced. Special differentials through the different ports were agreed upon from time to time upon almost all commodities. For no considerable length of time was it true that ocean rates from all the ports were the same nor that through rates by all the ports were the same. As a rule, ocean rates were higher from the out-ports than from New York, but not to the full extent of the differential. The Johnson Line appears to have reconsidered its withdrawal from the agreement upon being conceded a differential of 1½ cents at Baltimore and 1 cent at Philadelphia upon flour, oatmeal, cotton seed oil, cotton seed cake and linseed meal. This was accomplished by allowing the lines from Baltimore to make a rate 1½ cents and from Philadelphia 1 cent above those from New York, thus producing a through rate via Baltimore 1½ cents lower, and via Philadelphia 1 cent lower than via New York.

Considerable testimony was introduced as to the effect of this agreement on bookings of traffic, but while we have examined those tables with care they do not apparently disclose any well settled fact which justifies a finding or renders it necessary for us to refer to them in detail. The operation of this freight agreement pretty clearly demonstrated two things.

First: That a through rate via the ports of Philadelphia and Baltimore less than that via New York by the full amount of the differentials would unduly and unnaturally divert traffic from the port of New York.

Second: That the maintenance of equal rates through all the ports would divert traffic to New York to a much greater extent than it at present moves through that port. It must be true, as claimed by New York, that the inland differential modifies the ocean rate but not to the full amount of the differential.

New York offers facilities in the way of ocean transportation not obtainable at any other port. There are more sailings from New York than from the out-ports, and its steamship lines reach many foreign ports which are not served by lines from Baltimore, Philadelphia or Boston. Its steamships are faster and larger. The enormous passenger business through the port of New York, of itself, goes far towards the maintenance of many of these lines. Cargoes of import traffic are much more easily loaded for New York than for the out-ports. The banking facilities at the port of New York are superior to those elsewhere.

Below is a table showing the number of vessels, together with their tonnage, which entered and cleared at the four ports during the year 1903:

	Number Entered.	Tonnage.	Number Cleared.	Tonnage.
New York	3,852	9,053,096	3,680	8,847,072
Boston	1,787	2,978,913	1,515	2,217,543
Philadelphia	1,123	1,993,422	1,021	1,861,423
Baltimore	790	1,406,529	715	1,338,888

New York also has storage capacity for grain and flour which is much greater than at the other ports. The elevator capacity of the four ports in bushels was given as follows:

New York	15,730,000
Boston	4,250,000
Philadelphia	4,300,000
Baltimore	5,350,000

These superior facilities attract, first the higher classes of freight which move very largely through the port of New York,

but after all this has been provided for there still remains room available for low class freight at low prices, depending always upon the supply. Broadly speaking the shipper can secure a better, more reliable, quicker and more frequent service through the port of New York, all of which tends to attract traffic to that port at the expense of Baltimore and Philadelphia when the through rate is the same. To some extent this is true of Boston, although the ocean service from that port is better than from either Philadelphia or Baltimore.

Of these four ports the distance by water to the principal foreign destinations is the shortest from Boston; the longest from Baltimore and Philadelphia. The actual difference in time occupied is from one to two days. For this reason it is contended that the cost of service from these two ports is greater than from Boston and New York and that ships will not frequent them at equal rates.

It is undoubtedly true that the time occupied from these southern ports is longer and consequently that the actual expense of propelling the ship is greater. This item is not, however, very considerable and is to a great extent, if not wholly, offset at the port of New York by higher port charges and increased cost of labor. We saw in the former case that cargo rates were exactly the same from New York, Philadelphia and Baltimore and from this it would appear that the additional cost cannot be much greater in case of the southern ports. But the advantage in obtaining cargoes is so much greater at New York and especially the possibility of finding cargoes abroad for New York is so much better that at equal rates regular line steamers prefer the port of New York to Baltimore or Philadelphia, although a tramp vessel, interested only in that voyage, makes either port at the same price.

New York undertook to show that these differentials in fact diverted traffic from that port, placing this both upon evidence of specific instances of diversion and upon an examination of the relative amount of export traffic which now passes through these several ports as compared with former years.

Grain is seldom exported upon a through bill of lading. It is brought to the seaboard upon the regular published export

rate, the owner of the grain making his own engagement for ocean carriage either before or after the arrival of the grain itself at the port of export. With most other kinds of traffic this is different. A prospective shipper applies to the agent of a railroad company for a through rate from the interior point to the foreign destination. The inland rate, applicable to the movement of that traffic, is published by the carrier and therefore fixed. This agent now ascertains the ocean rate by communicating with steamship agents representing the various ports. Having learned from what port the lowest ocean rate can be obtained, he adds together this ocean rate and the inland rate to that port and thereby ascertains for his customer the through rate. Since ocean rates are continually varying at the ports, this through rate must sometimes be higher through one port and sometimes through another. New York introduced the agents of various New York lines, like the Erie, the Delaware, Lackawanna & Western, and the New York Central, who testified that while they were anxious to send business through New York, since their lines would in that case obtain the entire haul to that point, they were compelled in many instances, indeed for the periods referred to in the majority of instances, to bill those shipments through various out-ports for the reason that the rate through such ports was more favorable. Upon the other hand it was shown by Baltimore and Philadelphia that flouring mills, for example, located at those two ports, frequently shipped flour for export to the port of New York, and a representative of the Baldwin locomotive works presented a detailed statement showing that the greater part of the product of that company sold abroad was sent from Philadelphia to New York at the regular freight rate and there exported by New York lines.

It is manifest, as already suggested, that the rate from interior points must make sometimes through one port and sometimes through another. Single instances, or single months, are of uncertain value as determining the effect of these differentials. It should be noticed that for still another reason it is unsafe to compare one year with another even when an entire year is taken. While much of this traffic is strictly competitive, much of it is non-competitive, especially grain and grain prod-

ucts. Certain sections of country are peculiarly tributary to certain railroads. If the grain crop fails in that section tributary to the Baltimore & Ohio, the exports of grain from the port of Baltimore will fall off. So too, the amount of grain or flour exported through the port of New York might depend largely upon the offerings of other traffic, since it is only when these offerings have been exhausted that ships from that port will take grain at sufficiently low rates to obtain it. From all these considerations it results that the effect of this differential upon the movement of traffic can only be approximately determined by comparing periods of considerable extent.

For the purpose of showing the effect of these differentials upon the movement of export traffic a great mass of statistical information was introduced. We have carefully examined these statistics and have endeavored to give them proper consideration, but they warrant no definite finding, nor does it seem worth while to encumber this report with any extended statement of them. As indicating in a general way the movement of this traffic, the following tables may be referred to:

Table No. 1 shows the exports of wheat, corn and oats, in bushels, through the four ports, Boston, New York, Philadelphia and Baltimore, with percentages in each case to the total group, from 1878 to and including 1904.

TABLE NO. 1.

Year.	Boston.	Per Ct.	New York.	Per Ct.	Philadelphia.	Per Ct.	Baltimore.	Per Ct.	Totals.
1878.	....	....	53,510,363W	65.07	8,954,449W	10.89	19,766,074W	24.01	82,230,886
	....	....	26,118,892C	41.91	19,652,826C	31.54	16,543,812C	26.55	62,315,530
Totals	10,502,388	6.77	79,629,255	51.36	28,607,275	18.45	36,309,886	23.43	155,045,804
1879.	....	....	60,541,234W	55.94	16,814,572W	15.53	30,869,104W	28.52	108,224,910
	....	....	34,357,057C	49.38	14,039,228C	20.18	21,155,422C	30.42	69,551,707
Totals	11,057,454	5.85	94,898,291	50.25	30,853,800	16.34	52,024,526	27.55	188,834,071
1880.	11,263,798W	8.51	74,863,083W	56.56	11,312,590W	8.54	34,923,152W	26.38	132,362,623
	3,275,665C	4.74	34,646,089C	50.13	16,579,645C	23.99	14,604,364C	21.13	69,105,763
Totals	14,539,463	7.22	109,509,172	54.35	27,892,235	13.84	49,527,516	24.58	201,468,386
1881.	3,162,540W	4.52	38,366,185W	54.91	8,892,260W	12.72	19,453,676W	27.84	69,874,661
	8,006,095C	14.89	27,554,077C	51.26	6,099,434C	11.34	12,097,376C	22.50	53,756,982
Totals	11,168,635	9.03	65,920,262	53.32	14,991,694	12.12	31,551,052	25.52	123,631,643
1882.	2,843,493W	4.54	36,670,191W	58.58	5,852,951W	9.35	17,233,469W	27.53	62,600,104
	2,174,320C	19.12	7,253,895C	63.79	808,599C	7.10	1,132,407C	9.96	11,369,221
Totals	5,017,813	6.78	43,924,086	59.38	6,661,550	9.01	18,365,876	24.83	73,969,325

TABLE NO. 1—*Continued.*

Year.	Boston.	Per Ct.	New York.	Per Ct.	Philadelphia.	Per Ct.	Baltimore.	Per Ct.	Totals.
1883.	1,989,748W	4.79	20,046,291W	48.22	4,096,297W	9.85	15,434,689W	37.13	41,567,025
	4,555,009C	10.59	22,849,520C	53.14	5,304,943C	12.34	10,285,875C	23.92	42,995,347
Totals	6,544,757	7.74	42,895,811	50.72	9,401,240	11.11	25,720,564	30.41	84,562,372
1884.	1,639,598W	3.26	26,767,296W	53.32	5,566,173W	11.09	16,217,600W	32.31	50,190,667
	4,156,483C	20.44	9,492,200C	46.67	1,744,252C	8.57	4,943,010C	24.31	20,335,945
Totals	5,796,081	8.21	36,259,496	51.41	7,310,425	10.36	21,160,610	30.00	70,526,612
1885.	1,680,022W	6.24	17,111,294W	63.60	3,532,192W	13.13	4,581,261W	17.03	26,904,769
	3,778,823C	7.41	27,214,189C	53.39	5,929,244C	11.63	14,048,287C	27.56	50,970,543
Totals	5,458,845	7.01	44,325,483	56.92	9,461,436	12.15	18,629,548	23.92	77,875,312
1886.	2,376,298W	4.65	32,090,610W	62.89	6,079,146W	11.91	10,475,395W	20.53	51,021,449
	3,025,673C	7.75	20,996,705C	53.81	1,857,353C	4.76	13,138,229C	33.67	39,017,960
Totals	5,401,971	6.00	53,087,315	58.96	7,936,499	8.81	23,613,624	26.23	90,039,409
1887.	3,983,925W	6.06	41,886,049W	63.75	8,774,174W	13.35	11,057,290W	16.83	65,701,438
	2,313,958C	9.74	12,306,272C	51.85	1,996,583C	8.41	7,115,814C	29.98	23,732,627
Totals	6,297,883	7.04	54,192,321	60.59	10,770,757	12.04	18,173,104	20.32	89,434,065
1888.	1,210,666W	6.42	12,609,242W	66.88	949,844W	5.03	4,082,508W	21.65	18,852,260
	3,245,820C	14.69	14,236,181C	64.46	859,371C	3.89	3,741,914C	16.94	22,083,286
Totals	4,456,486	10.88	26,845,423	65.58	1,809,215	4.42	7,824,422	19.11	40,935,546

1889.	459,111W	2.74	10,784,303W	64.41	1,110,606W	6.63	4,389,790W	26.21	16,743,810
	7,135,933C	12.65	28,786,977C	51.05	3,640,316C	6.45	16,822,808C	29.83	56,386,034
Totals	7,595,044	10.38	39,571,280	54.11	4,750,922	6.49	21,212,598	29.01	73,129,844
1890.	525,287W	2.83	12,569,286W	67.88	617,876W	3.33	4,803,453W	25.91	18,515,902
	4,500,703C	6.89	24,600,147C	37.68	16,735,521C	25.63	19,447,144C	29.78	65,283,515
	515,878O	4.93	9,301,046O	89.04	12,587O	0.12	617,053O	5.90	10,446,564
Totals	5,541,868	5.87	46,470,479	49.31	17,365,984	18.42	24,867,650	26.38	94,245,981
1891.	2,787,125W	3.85	46,957,113W	64.98	6,840,503W	9.46	15,673,334W	21.69	72,258,075
	3,897,565C	16.56	13,180,393C	55.99	2,608,677C	11.08	3,852,911C	16.36	23,539,546
	35,406O	0.98	3,205,466O	90.25	309,857O	8.70	548O	....	3,551,277
Totals	6,720,096	6.76	63,342,972	63.75	9,759,037	9.82	19,526,793	19.65	99,348,898
1892.	7,501,903W	8.86	50,813,295W	60.03	9,762,594W	11.53	16,567,652W	19.57	84,645,444
	2,971,858C	4.85	18,786,801C	30.67	19,779,876C	32.29	19,707,257C	32.16	61,245,792
	73,745O	1.64	3,742,812O	84.37	446,478O	10.06	172,271O	3.88	4,435,306
Totals	10,547,506	7.02	73,342,908	48.79	29,988,948	19.95	36,447,180	24.24	150,326,542
1893.	5,275,276W	8.48	38,047,932W	61.18	5,723,510W	9.20	13,141,293W	21.13	62,188,011
	5,241,170C	18.05	12,802,039C	44.09	3,865,633C	13.31	7,122,350C	24.53	29,031,192
	3,651O	0.05	5,197,007O	77.75	103,400O	1.54	1,380,255O	20.64	6,684,313
Totals	10,520,097	10.74	56,046,978	57.24	9,692,543	9.90	21,643,898	22.11	97,903,516
1894.	5,812,828W	13.21	25,141,494W	57.16	4,487,496W	10.20	8,543,685W	19.42	43,985,503
	3,823,635C	15.00	11,406,711C	44.76	2,577,540C	10.11	7,676,862C	30.12	25,484,748
	2,350O	0.61	382,805O	99.34	169O	....	46O	....	385,370
Totals	9,638,813	13.80	36,931,010	52.88	7,065,205	10.11	16,220,598	23.22	69,855,621

TABLE NO. 1—*Continued.*

Year.	Boston.	Per Ct.	New York.	Per Ct.	Philadelphia.	Per Ct.	Baltimore.	Per Ct.	Totals.
1895.	7,380,391W	19.52	24,554,758W	64.99	1,885,598W	4.98	3,976,838W	10.52	37,797,585
	5,281,069C	13.98	19,693,471C	52.15	3,140,920C	8.32	9,645,758C	25.54	37,761,218
	1,520O	0.09	1,497,587O	88.47	59,420O	3.51	134,318O	7.93	1,692,845
Totals	12,662,980	16.39	45,745,816	59.21	5,085,938	6.58	13,756,914	17.81	77,251,648
1896.	9,781,250W	22.73	21,766,950W	50.57	4,902,181W	11.38	6,588,559W	15.31	43,038,940
	5,990,397C	10.09	18,861,794C	31.68	8,934,402C	15.06	25,602,693C	43.15	59,329,286
	1,919,677O	7.62	15,880,150O	63.12	438,824O	1.74	6,919,519O	27.50	25,158,170
Totals	17,691,324	13.82	56,448,894	44.26	14,275,407	11.19	39,110,771	36.67	127,526,396
1897.	12,143,204W	18.26	33,840,506W	50.90	5,202,416W	7.82	15,304,037W	23.02	66,490,163
	9,464,163C	8.54	33,202,496C	29.96	25,129,658C	22.67	43,048,008C	38.83	110,844,325
	5,471,275O	11.28	35,374,061O	72.91	2,402,781O	4.95	5,270,096O	10.86	48,518,213
Totals	27,078,642	11.99	102,417,063	45.35	32,734,855	14.49	63,622,141	28.17	225,852,701
1898.	13,021,229W	14.17	54,600,006W	59.43	5,706,466W	6.21	18,542,034W	20.19	91,869,735
	11,799,265C	9.36	39,376,615C	31.23	29,816,889C	23.65	45,096,477C	35.76	126,089,246
	8,720,931O	19.78	24,584,886O	55.76	5,923,422O	13.44	4,859,686O	11.02	44,088,925
Totals	33,541,425	12.80	118,561,507	45.25	41,446,777	15.81	68,498,197	26.14	262,047,906
1899.	12,931,292W	22.10	32,071,942W	54.82	3,956,290W	6.76	9,549,270W	16.32	58,508,794
	17,438,813C	13.04	40,151,755C	30.04	29,297,419C	21.92	46,786,127C	35.00	133,674,114
	5,241,677O	16.52	14,591,038O	46.00	7,880,766O	24.85	4,005,107O	12.63	31,718,588

Totals	35,611,782	15.91	86,814,735	38.77	41,134,475	18.37	60,340,504	26.95	223,901,496
1900.	11,925,415W	27.27	21,934,963W	50.15	5,342,215W	12.22	4,529,811W	10.36	43,732,404
	13,893,525C	10.56	43,645,963C	33.19	33,451,170C	25.43	40,535,023C	30.82	131,525,681
	4,518,168O	18.29	9,505,491O	38.48	6,703,246O	27.14	3,972,810O	16.09	24,699,715
Totals	30,337,108	15.17	75,086,417	37.55	45,496,631	22.75	49,037,644	24.53	199,957,800
1901.	20,084,378W	24.59	30,161,250W	36.93	11,466,402W	14.04	19,962,737W	24.44	81,674,767
	11,044,197C	14.81	23,162,850C	31.07	15,645,111C	20.98	24,711,790C	33.14	74,563,948
	3,979,084O	19.77	9,671,159O	48.05	2,824,121O	14.03	3,652,810O	18.15	20,127,174
Totals	35,107,659	19.91	62,995,259	35.72	29,935,634	16.97	48,327,337	27.40	176,365,889
1902.	15,307,351W	24.56	27,136,272W	43.53	10,434,434W	16.74	9,460,012W	15.17	62,338,069
	798,097C	7.36	3,124,482C	28.80	2,424,617C	22.35	4,501,555C	41.49	10,848,751
	514,741O	10.08	3,871,596O	75.79	584,756O	11.44	137,505O	2.69	5,108,598
Totals	16,620,189	21.23	34,132,350	43.59	13,443,807	17.17	14,099,072	18.01	78,295,418
1903.	6,738,533W	23.44	15,181,840W	52.82	3,451,763W	12.01	3,373,689W	11.73	28,745,825
	7,063,855C	12.15	21,985,816C	37.80	9,990,923C	17.18	19,113,566C	32.87	58,154,160
	185,542O	5.92	2,892,612O	92.26	....	....	56,951O	1.82	3,135,105
Totals	13,987,930	15.54	40,060,268	44.49	13,442,686	14.93	22,544,206	25.04	90,035,090
1904.	2,671,786W	56.29	1,750,628W	36.88	184,000W	3.88	140,262W	2.95	4,746,676
	4,296,095C	15.24	10,018,885C	35.54	6,164,925C	21.88	7,706,237C	27.34	28,186,142
	78,722O	3.88	1,875,272O	92.42	52,574O	2.59	22,560O	1.11	2,029,128
Totals	7,046,603	20.15	13,644,785	39.03	6,401,499	18.31	7,869,059	22.51	34,961,946

Table No. 2 shows the receipts of grain at New York via canal and rail yearly from 1878 to 1903, inclusive.

TABLE No. 2.

Year.	Canal. Total during 12 months.	Rail. Total during 12 months.
1877	47,911,754	34,081,586
1878	63,663,049	63,960,486
1879	57,035,507	76,483,604
1880	69,345,829	71,901,088
1881	38,188,910	73,289,097
1882	32,148,345	53,672,968
1883	41,214,293	51,389,834
1884	37,924,524	48,086,975
1885	29,926,879	65,563,023
1886	43,995,885	59,200,235
1887	46,009,200	50,755,235
1888	34,020,600	40,515,050
1889	33,994,590	50,434,748
1890	30,185,400	63,938,068
1891	31,696,694	96,194,173
1892	26,780,675	105,111,076
1893	43,835,800	61,802,966
1894	43,031,800	42,535,695
1895	14,690,100	72,778,335
1896	32,250,050	88,227,725
1897	21,892,361	132,524,575
1898	19,407,100	141,623,160
1899	16,955,900	127,106,575
1900	11,546,507	108,331,325
1901	14,427,100	87,922,480
1902	11,900,350	69,270,959
1903	12,900,100	74,762,884

Table No. 3 shows the exports of wheat, corn and oats from the ports of Montreal, Portland, Boston, New York, Philadelphia, Baltimore, Norfolk, Newport News, New Orleans and Galveston, from 1878 to 1904, inclusive, with percentages from each port.

TABLE

Year.	Montreal		Portland.		Boston.		New York.		Philadelphia.	
1878.	....	....	....	....	....	....	53,510,363W 26,118,892C	....	8,954,449W 19,652,826C	....
Total Exports...	10,509,509	6.0	1,628,393	.9	10,502,388	6.0	79,629,255	45.6	28,607,275	16.5
1879.	....	....	....	....	....	....	60,541,234W 34,357,057C	....	16,814,572W 14,039,228C	....
Total Exports...	22,700,000	10.3	963,891	.5	11,057,454	5.0	94,898,291	43.3	30,853,800	14.1
1880	8,221,895W 7,065,745C	5.6 8.2	1,041,375W 1,329,811C	.9 1.5	11,263,798W 3,275,665C	7.0 3.8	74,863,083W 34,646,089C	50.5 40.0	11,312,590W 16,579,644C	7.7 19.1
Total Exports...	15,287,640	6.5	2,371,186	1.0	14,539,463	6.3	109,509,172	46.8	27,892,234	11.9
1881.	5,590,984W 3,209,968C	6.9 4.9	975,294W 232,989C	1.3 .4	3,162,540W 8,006,095C	3.9 12.3	38,366,185W 27,554,077C	47.4 42.3	8,892,260W 6,099,434C	10.9 9.4
Total Exports...	8,800,952	6.2	1,208,283	.8	11,168,635	7.6	65,920,262	45.1	14,991,694	10.4
1882.	5,797,155W 516,230C	7.8 4.3	801,612W 11,948C	1.0	2,843,493W 2,174,320C	3.8 17.1	36,670,191W 7,253,895C	49.6 60.4	5,852,951W 808,599C	7.9 6.7
Total Exports...	6,313,385	7.3	813,560	.9	5,017,813	5.8	43,924,086	51.1	6,661,550	7.7
1883.	3,518,127W 4,122,182C	7.1 7.1	1,347,067W 296,670C	2.7 .5	1,989,748W 4,555,009C	4.0 8.0	20,046,291W 22,849,520C	40.7 39.6	4,096,297W 5,304,943C	8.3 9.2
Total Exports...	7,640,309	7.2	1,643,737	1.6	6,544,757	6.1	42,895,811	40.1	9,401,240	8.
1884.	3,426,885W 2,036,050C	6.1 7.4	253,161W 1,283,600C	.5 4.7	1,639,598W 4,156,483C	2.9 15.1	26,767,296W 9,492,200C	48.0 34.0	5,566,173W 1,744,252C	10. 6.
Total Exports...	5,462,935	6.5	1,536,761	1.8	5,796,081	7.0	36,256,496	43.5	7,310,425	8.
1885.	3,372,160W 1,945,898C	10.5 3.2	854,538W 458,581C	2.7 .7	1,680,022W 3,778,823C	5.3 6.2	17,111,294W 27,214,189C	53.4 44.4	3,532,192W 5,929,244C	11. 9.
Total Exports...	5,318,058	5.7	1,313,119	1.4	5,458,845	5.8	44,325,483	47.5	9,461,436	10.1
1886.	5,885,662W 3,910,209C	9.8 7.3	960,882W 411,555C	1.6 .8	2,376,298W 3,025,673C	3.9 5.7	32,090,610W 20,996,705C	53.0 39.4	6,079,146W 1,857,353C	10. 3.
Total Exports...	9,795,871	8.6	1,372,437	1.2	5,401,971	4.7	53,087,315	46.7	7,936,499	7.
1887.	7,434,716W 1,263,108C	9.2 3.8	1,333,456W C	1.7	3,983,925W 2,313,958C	5.0 7.0	41,886,049W 12,306,272C	52.1 37.3	8,774,174W 1,996,583C	10. 6.
Total Exports...	8,697,824	7.7	1,333,456	1.2	6,297,883	5.5	54,192,321	47.8	10,770,757	9.
1888.	2,157,548W 2,660,003C	9.6 8.8	176,160W C	.8	1,210,666W 3,245,820C	5.3 10.7	12,609,242W 14,236,181C	56.0 47.0	949,844W 859,371C	4. 2.
Total Exports...	4,817,551	9.1	176,160	.3	4,456,486	8.5	26,845,423	50.8	1,809,215	3.
1889.	2,356,494W 6,601,989C	11.7 8.5	..........W 641,683C	8	459,111W 7,135,933C	2.3 9.1	10,784,303W 28,786,977C	53.6 36.9	1,110,606W 3,640,316C	5. 4.
Total Exports...	8,958,483	9.1	641,683	.7	7,595,044	7.8	39,571,280	40.3	4,750,922	4.

NO. 3.

Baltimore.		New Orleans.		Norfolk.		Newport News. (Known as Yorktown previous to 1889.)		Galveston.		Totals.
19,766,074W 16,543,812C	....	....	....	.... 255,795C	....	....	....	.... 2,737C	....	....
36,309,886	20.8	7,144,488	4.1	255,795	.1	....	....	2,737	....	174,589,726
30,869,104W 21,155,422C	....	....	....	.... 240,670C	....	....	....	.... 2,553C	....	....
52,024,526	23.8	6,318,605	2.9	240,670	.1	....	....	2,553	....	219,059,790
34,923,152W 14,604,364C	23.6 16.9	5,505,020W 8,855,579C	4.1 10.3	..........W 192,903C	2	....	....	....	....	147,130,913W 86,549,800C
49,527,516	21.2	14,360,599	6.2	192,903	.1	....	....	....	....	233,680,713
19,453,676W 12,097,376C	24.2 18.5	4,349,575W 7,692,259C	5.4 11.8	8,980W 263,316C	4	....	....	456W C	....	80,799,950W 65,155,514C
31,551,052	21.5	12,041,834	8.2	272,296	.2	....	....	456	....	145,955,464
17,233,469W 1,132,407C	23.5 9.4	4,609,033W 253,790C	6.2 2.1	....	....	134,859W C	.2	1,048W C	....	73,943,811W 12,151,189C
18,365,876	21.4	4,862,823	5.6	....	....	134,859	.2	1,048	....	86,095,000
15,434,689W 10,285,875C	31.4 17.8	2,622,717W 9,856,041C	5.4 17.1	..........W 384,183C	7	176,541W C	.4	28,043W 2,645C	....	49,259,520W 57,657,068C
25,720,564	24.0	12,478,758	11.7	384,183	.3	176,541	.2	30,688	....	106,916,588
16,217,600W 4,943,010C	29.1 18.0	1,346,019W 3,975,626C	2.4 14.4	..........W 300C	....	535,350W C	1.0	2,120W C	....	55,764,202W 27,631,521C
21,160,610	25.4	5,321,645	6.4	300	....	535,350	.6	2,120	....	83,395,723
4,581,261W 14,048,287C	14.3 22.9	678,283W 7,302,910C	2.1 11.9	..........W 21,486C	....	227,165W 618,350C	.7 1.0	....	....	32,036,915W 61,317,763C
18,629,548	20.0	7,981,193	8.6	21,486	....	845,515	.9	....	....	93,354,678
10,475,395W 13,138,229C	17.3 24.7	1,041,141W 7,896,339C	1.7 14.8	..........W 53,021C	1	1,638,250W 1,962,598C	2.7 3.7	..........W 1,260C	....	60,547,384W 53,252,942C
23,613,624	20.7	8,937,480	7.9	53,021		3,600,848	3.2	1,260	....	113,800,326
11,057,290W 7,115,814C	13.7 21.6	4,299,242W 7,301,011C	5.3 22.1	193,838W 199,242C	.2 .6	1,501,477W 505,481C	1.9 1.5	....	....	80,464,167W 33,001,469C
18,173,104	16.0	11,600,253	10.2	393,080	.3	2,006,958	1.8	....	....	113,465,636
4,082,508W 3,741,914C	18.1 12.3	1,027,322W 5,055,512C	4.6 16.7	..........W 82,674C	3	322,309W 427,110C	1.4 1.4	....	....	22,535,599W 30,308,585C
7,824,422	14.8	6,082,834	11.5	82,674	.2	749,419	1.4	....	....	52,844,184
4,389,790W 16,822,808C	21.8 21.6	991,184W 13,469,754C	4.9 17.3	2,982W 27,903C	....	31,885W 880,251C	.2 1.1	....	....	20,126,355W 78,007,614C
21,212,598	21.6	14,460,938	14.8	30,885	....	912,136	.9	....	....	98,133,969

TABLE NO.

Year.	Montreal.		Portland.		Boston.		New York.		Philadelphia.	
1890.	2,156,807W 4,849,024C 210,000O	9.6 5.7 1.9	65,213W 323,376C ....O	.4 .4	525,287W 4,500,703C 515,878O	2.3 5.3 4.4	12,569,286W 24,600,147C 9,301,046O	56.0 29.1 79.7	617,876W 16,735,521C 12,587	2.8 19.3 .1
Total Exports...	7,215,831	6.1	388,589	.3	5,541,868	4.6	46,470,479	39.2	17,365,984	14.7
1891.	6,090,114W 2,173,070C 744,287O	6.5 7.7 13.2	700,157W 50C ....O	.8	2,787,125W 3,897,565C 35,406O	3.0 13.8 .6	46,957,113W 13,180,393C 3,205,466O	50.3 46.5 56.8	6,840,503W 2,608,677C 309,857O	7.3 9.2 5.5
Total Exports...	9,007,471	7.1	700,207	.5	6,720,096	5.3	63,342,972	49.7	9,759,037	7.7
1892.	8,489,698W 1,764,859C 5,020,140O	7.6 2.5 45.4	1,010,545W ....C ....O	.9	7,501,903W 2,971,858C 73,745O	6.7 4.1 .7	50,813,295W 18,786,801C 3,742,812O	45.4 26.1 33.8	9,762,594W 19,779,876C 446,478O	8.7 27.5 4.0
Total Exports...	15,274,697	7.8	1,010,545	.5	10,547,506	5.5	73,342,908	37.7	29,988,948	15.4
1893.	6,909,337W 9,650,554C 3,119,240O	7.9 20.0 31.6	1,050,049W 24,705C ....O	1.2	5,275,276W 5,241,170C 3,651O	6.0 10.9	38,047,932W 12,802,039C 5,197,007O	43.7 26.6 52.6	5,723,510W 3,865,633C 103,400O	6.6 8.0 1.1
Total Exports...	19,679,131	13.5	1,074,754	.7	10,520,097	7.3	56,046,978	38.6	9,692,543	6.7
1894.	5,337,455W 1,969,417C 77,569O	9.7 5.0 16.7	395,961W 623,578C ....O	.7 1.6	5,812,828W 3,823,635C 2,350O	10.5 9.7 .5	25,141,494W 11,406,711C 382,805O	45.6 28.9 82.8	4,487,496W 2,577,540C 169O	8.2 6.5 ....
Total Exports...	7,384,441	7.8	1,019,539	1.1	9,638,818	10.1	36,931,010	38.8	7,065,205	7.4
1895.	3,795,000W 2,458,000C 10,750O	8.7 4.1 .6	...........W 456,505C ....O	.... .8	7,380,391W 5,281,069C 1,520O	16.9 8.9 .1	24,554,758W 19,693,471C 1,497,587O	56.2 33.2 82.8	1,885,598W 3,140,920C 59,420O	4.3 5.8 3.3
Total Exports...	6,263,750	6.0	456,505	.4	12,662,980	12.1	45,745,816	43.7	5,085,938	4.8
1896.	6,877,846W 6,658,944C 2,631,785O	12.0 5.5 8.3	73,322W 565,836C ....O	.1 .5	9,781,250W 5,990,397C 1,919,677O	17.1 4.9 6.1	21,766,950W 18,801,794C 15,880,150O	38.0 15.5 50.4	4,902,181W 8,934,402C 438,824O	8.6 7.4 1.4
Total Exports...	16,168,575	7.7	639,158	.3	17,691,324	8.4	56,448,894	26.9	14,275,407	6.8
1897.	9,924,029W 9,224,364C 5,231,903O	10.2 5.1 9.0	1,108,884W 154,097C 745,642O	1.1 .1 1.3	12,143,204W 9,464,163C 5,471,275O	12.4 5.2 9.4	33,840,506W 33,202,496C 35,374,061O	34.7 18.3 60.5	5,202,416W 25,129,658C 2,402,781O	5.3 12.9 4.1
Total Exports...	24,380,296	7.2	2,008,623	.6	27,078,642	8.0	102,417,063	30.3	32,734,855	9.7
1898.	9,132,771W 19,252,825C 6,798,817O	6.9 9.7 11.8	3,356,818W 2,070,833C 2,132,782O	2.5 1.0 3.7	13,021,229W 11,799,265C 8,720,931O	9.9 5.9 15.1	54,600,006W 39,376,615C 24,584,886O	41.4 19.8 42.6	5,706,466W 29,816,889C 5,923,422O	4.3 15.9 10.3
Total Exports...	35,184,413	9.0	7,560,433	1.9	33,541,425	8.6	118,561,507	30.5	41,446,777	10.7
1899.	9,909,159W 13,276,350C 3,991,164O	9.7 6.7 8.2	5,313,328W 1,928,956C 4,202,299O	5.2 1.0 8.7	12,931,292W 17,438,813C 5,241,677O	12.7 8.8 10.8	32,071,942W 40,151,755C 14,591,038O	31.5 20.3 30.1	3,956,290W 29,297,419C 7,880,766O	3.9 14.3 16.3
Total Exports...	27,176,673	7.8	11,444,583	3.3	35,611,782	10.2	86,814,735	25.0	41,134,475	11.8

3.—Continued.

Baltimore.		New Orleans.		Norfolk.		Newport News. (Known as Yorktown previous to 1889.)		Galveston.		Totals.
4,803,453W	21.4	1,308,710W	5.8	16,000W	.1	365,643W	1.6	..........W	....	22,428,275W
19,447,144C	23.0	12,768,422C	15.0	22,728C	....	1,331,279C	1.6	36,012C	.1	84,614,356C
617,053O	5.3	..........O	....	..........O	....	1,006,702O	8.6	..........O	....	11,663,266O
24,867,650	20.9	14,077,132	11.9	38,728	....	2,703,624	2.3	36,012	....	118,705,897
15,673,334W	16.8	10,497,110W	11.2	1,492,024W	1.6	1,814,024W	1.9	587,395W	.6	93,438,899W
3,852,911C	13.6	1,843,869C	6.5	83,617C	.3	682,260C	2.4	12,741C	....	28,335,153C
548O	....	..........O	....	..........O	....	1,345,487O	23.9	..........O	....	5,641,051O
19,526,793	15.3	12,340,979	9.7	1,575,641	1.2	3,841,771	3.0	600,136	.5	127,415,103
16,567,652W	14.8	14,450,811W	12.9	628,247W	.6	2,323,824W	2.1	377,885W	.3	111,926,454W
19,707,257C	27.4	7,044,044C	9.8	598,552C	.8	1,026,098C	1.6	144,775C	.2	71,824,120C
172,271O	1.6	..........O	....	..........O	....	1,604,329O	14.5	..........O	....	11,059,775O
36,447,180	18.7	21,494,855	11.0	1,226,799	.6	4,954,251	2.5	522,660	.3	194,810,349
13,141,293W	15.1	13,530,944W	15.5	105,672W	.1	2,079,040W	2.4	1,310,950W	1.5	87,174,003W
7,122,350C	14.8	6,344,375C	13.2	510,307C	1.0	2,560,088C	5.3	98,508C	.2	48,219,729C
1,380,255O	13.9	..........O	....	..........O	....	80,226O	.8	..........O	....	9,883,779O
21,643,898	14.9	19,875,319	13.7	615,979	.4	4,719,354	3.3	1,409,458	.9	145,277,511
8,543,685W	15.5	2,901,531W	5.3	..........W	....	2,365,402W	4.3	135,137W	.2	55,120,989W
7,676,862C	19.5	5,341,517C	13.5	1,228,962C	3.1	4,822,738C	12.2	5,412C	....	39,476,372C
46O	....	..........O	....	..........O	....	..........O	....	..........O	....	462,939O
16,220,593	17.1	8,243,048	8.7	1,228,962	1.3	7,188,140	7.5	140,549	.2	95,060,300
3,976,838W	9.1	762,878W	1.7	163,265W	.4	1,185,400W	2.7	..........W	....	43,704,128W
9,645,758C	16.3	8,756,766C	14.3	3,716,081C	6.3	4,866,335C	8.2	1,233,477C	2.1	59,248,382C
134,318O	7.4	..........O	....	..........O	....	104,982O	5.8	..........O	....	1,808,577O
13,756,914	13.1	9,519,644	9.1	3,879,346	3.7	6,156,717	5.9	1,233,477	1.2	104,761,087
6,588,559W	11.5	3,851,337W	6.7	..........W	....	17,327W	....	3,438,939W	6.0	57,297,711W
25,602,693C	21.1	25,301,530C	20.8	12,923,820C	10.6	10,376,625C	8.6	6,207,714C	5.1	121,363,755C
6,919,519O	21.9	..........O	....	..........O	....	3,750,054O	11.9	..........O	....	31,540,009O
39,110,771	18.6	29,152,867	13.9	12,923,820	6.1	14,144,006	6.7	9,646,653	4.6	210,201,475
15,304,037W	15.7	10,256,248W	10.6	987,691W	1.0	1,465,465W	1.5	7,355,636W	7.5	97,688,116W
43,048,008C	23.7	27,714,472C	15.3	12,427,373C	6.9	16,772,539C	9.3	4,073,021C	2.2	181,210,191C
5,270,096O	9.0	1,294,518O	2.2	..........O	....	2,655,900O	4.5	..........O	....	58,446,176O
63,622,141	18.9	39,365,238	11.7	13,415,064	4.0	20,893,904	6.2	11,428,657	3.4	337,344,483
18,542,034W	14.0	12,795,542W	9.7	600,791W	.5	2,937,312W	2.2	11,288,278W	8.6	131,981,247W
45,096,477C	22.6	20,735,569C	10.4	9,383,325C	4.7	16,115,375C	8.1	5,565,600C	2.8	199,212,773C
4,859,686O	8.4	1,662,956O	2.9	..........O	....	3,038,737O	5.2	1,668O	....	57,723,885O
68,498,197	17.6	35,194,067	9.1	9,984,116	2.6	22,091,424	5.7	16,855,546	4.3	388,917,905
9,549,270W	9.4	11,562,812W	11.4	148,882W	.2	503,897W	.5	15,713,400W	15.5	101,660,272W
46,786,127C	23.6	21,939,586C	11.1	5,829,642C	2.9	14,170,131C	7.2	7,049,697C	3.6	197,868,476C
4,005,107O	8.3	923,729O	1.9	280O	....	7,558,004O	15.6	58,814O	.1	48,452,878O
60,340,504	17.3	34,426,127	9.9	5,978,804	1.7	22,232,032	6.4	22,821,911	6.6	347,981,626

TABLE NO.

Year.	Montreal.		Portland.		Boston.		New York.		Philadelphia.	
	10,596,361W	13.3	4,677,965W	5.8	11,925,415W	14.9	21,934,963W	27.4	5,342,215W	6.7
1900.	11,180,235C	6.1	1,781,266C	1.0	13,893,525C	7.5	43,645,963C	23.7	33,451,170C	18.2
	5,026,404O	13.8	2,818,735O	7.8	4,518,168O	12.4	9,505,491O	26.2	6,703,246O	18.4
Total Exports...	26,803,000	8.9	9,277,966	3.1	30,337,108	10.1	75,086,417	25.0	45,496,631	15.1
	13,626,071W	9.2	7,408,140W	5.0	20,084,378W	13.6	30,161,250W	20.3	11,466,402W	7.7
1901.	4,088,642C	4.2	593,086C	.6	11,044,197C	11.3	23,162,850C	23.8	15,645,111C	16.0
	2,667,116O	8.9	2,732,022O	9.1	3,979,084O	13.3	9,671,159O	32.4	2,824,121O	9.5
Total Exports...	20,381,829	7.4	10,733,248	3.9	35,107,659	12.7	62,995,259	22.9	29,935,634	10.9
	17,394,886W	14.4	9,233,016W	7.6	15,307,351W	12.7	27,136,272W	22.5	10,434,434W	8.6
1902.	256,392C	1.6	77,075C	.5	798,097C	4.9	3,124,482C	19.3	2,424,617C	15.0
	2,397,578O	26.8	857,637O	9.6	514,741O	5.8	3,871,596O	43.3	584,756O	6.5
Total Exports...	20,048,856	13.7	10,167,728	7.0	16,620,189	11.4	34,132,350	23.4	13,443,807	9.3
	16,065,004W	18.8	8,258,526W	9.7	6,738,533W	7.9	15,181,840W	17.8	3,451,763W	4.0
1903.	6,881,724C	7.8	1,631,682C	1.8	7,063,855C	8.0	21,985,816C	24.8	9,990,923C	11.3
	1,138,261O	19.2	1,621,347O	27.3	185,542O	3.1	2,892,612O	48.8	...........O	....
Total Exports...	24,077,989	13.4	11,511,555	6.4	13,987,930	7.8	40,060,268	22.2	13,442,686	7.5
	7,514,616W	35.1	3,692,982W	17.2	2,671,786W	12.5	1,750,628W	8.2	184,000W	.9
1904.	3,773,695C	8.5	777,184C	1.8	4,296,095C	9.7	10,018,885C	22.5	6,164,925C	12.9
	1,311,702O	33.3	536,126O	13.6	78,722O	2.0	1,875,272O	47.6	52,574O	1.2
Total Exports...	12,600,013	18.1	5,006,292	7.2	7,046,603	10.1	13,644,785	19.5	6,401,499	9.2

3.—*Concluded.*

Baltimore.		New Orleans.		Norfolk.		Newport News. (Known as Yorktown previous to 1889.)		Galveston.		Totals.
4,529,811W	5.7	8,059,677W	10.1	199W	....	1,675,294W	2.1	11,188,056W	14.0	79,929,956W
40,535,023C	22.0	23,403,453C	12.7	4,445,089C	2.4	8,702,313C	4.7	3,073,525C	1.7	184,111,562C
3,972,810O	10.9	1,569,192O	4.3	3,359O	.1	2,227,318O	6.1	55O	....	36,344,778O
49,037,644	16.3	33,032,322	11.0	4,448,647	1.5	12,604,925	4.2	14,261,636	4.8	300,386,296
19,962,737W	13.5	24,410,979W	16.5	660,590W	.4	4,785,596W	3.2	15,714,465W	10.6	148,280,608W
24,711,790C	25.3	12,832,139C	13.2	2,214,684C	2.3	3,172,573C	3.3	C	....	97,465,072C
3,652,810O	12.2	1,510,251O	5.1	748O	....	2,824,566O	9.5	...........O	....	29,861,877O
48,327,337	17.5	38,753,369	14.1	2,876,022	1.0	10,782,735	3.9	15,714,465	5.7	275,607,557
9,460,012W	7.8	15,643,745W	12.9	128,000W	.1	5,021,667W	4.2	11,081,326W	9.2	120,840,709W
4,501,555C	27.8	2,454,128C	15.2	386,840C	2.4	1,184,816C	7.3	963,205C	6.0	16,171,207C
137,505O	1.5	357,268O	4.0	...........O	....	223,837O	2.5	...........O	....	8,944,918O
14,099,072	9.7	18,455,141	12.6	514,840	.4	6,430,320	4.4	12,044,531	8.2	145,956,834
3,373,689W	4.0	11,989,273W	14.0	26,319W	....	334,448W	.4	20,039,633W	23.4	85,449,028W
19,113,566C	21.6	13,332,203C	15.0	840,397C	.9	3,535,966C	4.0	4,274,091C	4.8	88,653,223C
56,951O	1.0	35,935O	.6	...........O	....	...........O	....	500O	....	5,931,148O
22,544,206	12.5	25,357,411	14.1	866,716	.5	3,870,414	2.1	24,314,224	13.5	180,033,399
140,262W	.6	1,891,064W	8.8	...........W	....	...........W	....	3,582,104W	16.7	21,427,442W
7,706,237C	17.4	6,233,417C	14.0	579,795C	1.3	1,394,544C	3.1	3,483,176C	7.8	44,427,953C
22,560O	.6	61,555O	1.6	...........O	....	...........O	....	40O	....	3,938,551O
7,869,059	11.3	9,186,036	11.7	579,795	.8	1,394,544	2.0	7,065,320	10.1	69,793,946

Table No. 4 gives the exports of flour through Boston, New York, Philadelphia and Baltimore, with percentages in each case to the group, from 1878 to 1904, inclusive.

TABLE No. 4.

Year.	Exports from Boston.	P. Ct.	New York.	P. Ct.	Philadelphia.	P. Ct.	Baltimore.	P. Ct.	Total.
	(Barrels.)		(Barrels.)		(Barrels.)		(Barrels.)		(Barrels.)
1878	349,494	9.2	2,682,868	70.4	185,725	4.9	590,132	15.5	3,808,219
1879	618,111	12.1	3,857,258	75.3	201,818	3.9	447,382	8.7	5,124,569
1880	868,117	15.7	3,932,237	70.9	250,063	4.5	495,995	8.9	5,546,412
1881	868,210	16.9	3,695,986	71.7	176,016	3.4	413,923	8.0	5,154,135
1882	1,206,338	21.9	3,652,526	66.2	192,201	3.5	463,878	8.4	5,514,943
1883	1,766,172	25.6	4,330,146	62.7	363,342	5.3	441,477	6.4	6,901,137
1884	2,183,842	31.9	3,900,013	57.0	321,583	4.7	437,713	6.4	6,843,151
1885	1,792,326	24.4	3,763,029	51.2	695,287	9.5	1,093,093	14.9	7,343,735
1886	2,083,732	27.4	3,466,841	45.6	386,162	5.1	1,662,502	21.9	7,599,237
1887	2,058,321	20.2	4,431,010	43.6	603,093	5.9	3,081,246	30.3	10,173,670
1888	1,492,348	17.7	3,820,273	45.5	670,439	8.0	2,417,874	28.8	8,400,934
1889	1,222,851	15.6	3,710,565	47.5	554,370	7.1	2,332,805	29.8	7,820,591
1890	1,289,297	15.2	3,693,598	43.6	861,580	10.2	2,624,282	31.0	8,468,757
1891	1,560,673	16.4	4,128,360	43.2	1,156,342	12.1	2,703,715	28.3	9,549,090
1892	2,090,720	15.3	6,034,260	44.3	1,843,647	13.5	3,661,623	26.9	13,630,250
1893	1,855,471	14.7	6,047,931	48.0	1,376,434	10.9	3,331,374	26.4	12,611,210
1894	2,103,422	16.7	6,292,106	49.9	1,277,767	10.1	2,943,562	23.3	12,616,857
1895	1,433,157	15.3	4,516,145	48.1	903,122	9.6	2,539,981	27.0	9,392,405
1896	1,457,526	14.6	4,817,435	48.2	654,126	6.5	3,065,845	30.7	9,994,932
1897	1,208,731	13.4	4,699,767	51.9	815,181	9.0	2,325,803	25.7	9,049,482
1898	1,579,687	14.7	4,738,214	44.1	1,614,426	15.0	2,813,166	26.2	10,745,493
1899	1,528,257	13.1	4,724,035	40.3	2,101,435	17.9	3,367,485	28.7	11,721,212
1900	1,606,175	14.3	4,487,306	39.8	2,174,567	19.3	3,003,787	26.6	11,271,835
1901	1,496,163	13.4	4,092,711	36.7	2,237,527	20.1	3,324,953	29.8	11,151,354
1902	901,325	8.4	4,149,129	39.0	2,521,791	23.7	3,074,335	28.9	10,646,580
1903	767,044	6.8	4,281,084	38.2	2,664,177	23.8	3,480,618	31.2	11,201,923
1904	610,103	10.5	2,672,766	45.9	1,256,151	21.6	1,281,266	22.0	5,820,286

Table No. 5 gives the exports of provisions through Boston, New York, Philadelphia and Baltimore, from 1878 to 1904, inclusive, with percentages in each case to the group.

TABLE No. 5.

Year.	Boston.		New York.		Philadelphia.		Baltimore.		Total
	Pounds.	P. Ct.	Pounds.	P. Ct.	Pounds.	P. Ct.	Pounds.	P. Ct.	Pounds.
1878	177,313,913	13.8	949,716,756	73.8	121,922,480	9.5	37,615,338	2.9	1,286,568,487
1879	172,977,646	11.7	1,117,400,979	75.6	131,906,085	8.9	55,694,422	3.8	1,477,979,132
1880	254,146,110	16.1	1,150,816,554	72.8	116,441,867	7.3	59,526,091	3.8	1,580,930,622
1881	278,534,885	17.6	1,135,383,190	71.6	99,085,097	6.2	72,757,088	4.6	1,585,760,260
1882	181,927,957	17.4	764,522,680	73.1	90,547,980	8.7	8,780,423	.8	1,045,779,040
1883	125,265,015	15.0	631,217,415	75.5	67,189,006	8.0	12,194,244	1.5	835,865,680
1884	154,086,689	15.6	748,526,538	75.7	78,591,159	7.9	7,706,113	.8	988,910,499
1885	173,818,873	16.6	778,574,401	74.5	65,445,721	6.3	27,148,754	2.6	1,044,987,749
1886	170,847,397	16.3	738,942,537	70.7	96,749,294	9.3	38,988,966	3.7	1,045,528,194
1887	216,201,732	19.8	755,005,645	69.0	66,168,185	6.0	57,216,574	5.2	1,094,592,136
1888	189,956,731	17.7	771,293,311	71.8	56,891,702	5.3	55,428,400	5.2	1,073,570,144
1889	250,573,807	22.3	755,003,803	67.0	64,695,630	5.7	55,796,184	5.0	1,126,069,424
1890	372,419,921	22.3	1,065,939,026	64.0	72,771,274	4.4	155,470,733	9.3	1,666,600,954
1891	400,513,508	23.2	1,070,507,227	62.1	78,973,619	4.6	174,647,241	10.1	1,724,641,595
1892	394,827,138	23.6	1,045,763,882	62.6	65,800,496	3.9	165,285,072	9.9	1,671,676,588
1893	378,204,890	26.4	861,912,692	60.1	77,603,918	5.4	116,594,971	8.1	1,434,316,471
1894	355,880,234	23.7	929,779,656	61.9	66,936,101	4.5	149,115,475	9.9	1,501,711,466
1895	404,627,144	26.9	886,098,290	58.8	53,443,690	3.6	161,923,821	10.7	1,506,092,945
1896	426,635,173	27.8	883,995,074	57.5	63,528,608	4.1	163,571,885	10.6	1,537,730,740
1897	480,063,931	27.4	992,552,479	56.7	76,320,612	4.3	200,272,800	11.6	1,749,209,822
1898	640,974,604	30.0	1,097,110,179	51.4	83,786,890	3.9	313,607,311	14.7	2,135,478,984

TABLE NO. 5.—*Continued.*

Year.	Boston.		New York.		Philadelphia.		Baltimore.		Total
	Pounds.	P. Ct.	Pounds.	P. Ct.	Pounds.	P. Ct.	Pounds.	P. Ct.	Pounds.
1899	617,384,138	29.0	1,115,413,858	52.5	123,755,815	5.8	269,491,732	12.7	2,126,045,543
1900	522,809,038	26.0	1,065,111,919	53.1	150,139,385	7.5	269,655,117	13.4	2,007,715,459
1901	548,644,382	27.6	1,098,015,382	55.2	140,167,476	7.1	200,830,705	10.1	1,987,657,945
1902	403,831,090	23.4	999,850,200	58.1	179,071,759	10.4	139,591,172	8.1	1,722,344,221
1903	307,142,660	21.6	891,681,319	62.7	111,356,775	7.8	112,359,350	7.9	1,422,540,104
1904	365,439,493	22.6	982,494,549	60.9	110,760,941	6.9	155,442,452	9.6	1,614,137,435
Aggregate pounds.	8,965,048,099	22.4	25,282,629,541	63.2	2,510,051,565	6.3	3,236,712,434	8.1	39,994,441,639

Table No. 6 gives the total value of all exports through these four ports from 1878 to 1904, inclusive, with percentages in each case to the entire group.

TABLE No. 6.

Year.	Boston.	Per Ct.	New York.	Per Ct.	Philadelphia.	Per Ct.	Baltimore.	Per Ct.	Total.	Percentage of New York To Total Exports United States.
1878	$46,542,044	10.0	$327,226,478	70.6	$44,509,089	9.6	$45,492,527	9.8	$463,769,138	44.0
1879	48,100,019	10.0	327,796,819	68.2	47,013,751	9.8	57,474,495	12.0	480,385,084	44.5
1880	58,023,587	10.2	385,506,602	67.7	49,612,195	8.7	76,220,870	13.4	569,363,254	46.1
1881	72,100,193	12.4	393,658,208	67.6	44,147,296	7.6	72,444,413	12.4	582,350,110	43.6
1882	61,614,526	13.1	332,102,136	70.5	37,957,661	8.0	39,412,642	8.4	471,086,965	44.3
1883	61,273,101	12.2	347,308,334	69.2	38,132,145	7.6	54,956,050	11.0	501,669,630	42.2
1884	62,528,000	13.5	320,016,246	69.3	36,467,799	7.9	43,064,217	9.3	462,076,262	43.2
1885	61,378,633	12.8	334,718,227	69.8	38,642,516	8.0	45,041,634	9.4	479,781,010	45.1
1886	53,428,513	12.5	304,496,611	71.2	33,719,861	7.9	35,844,829	8.4	427,489,814	44.8
1887	57,775,156	12.8	306,842,375	68.0	35,361,876	7.8	51,601,118	11.4	451,580,525	42.8
1888	55,482,664	12.8	301,486,784	69.8	28,733,415	6.7	46,212,036	10.7	431,914,899	43.3
1889	68,868,409	15.0	310,928,151	67.0	27,707,437	6.1	50,602,996	11.0	458,106,993	41.9
1890	70,364,955	13.5	340,268,765	65.2	37,239,820	7.1	73,964,802	14.2	521,838,342	39.7
1891	76,719,517	15.0	337,806,277	65.9	33,438,639	6.5	64,356,479	12.6	512,320,912	38.2
1892	86,611,526	13.4	404,935,770	62.4	58,460,926	9.0	98,799,890	15.2	648,808,112	39.3
1893	84,595,157	15.5	339,040,667	62.3	49,374,447	9.1	71,482,652	13.1	544,492,923	40.0
1894	82,841,346	14.8	359,192,983	64.0	40,280,353	7.2	78,340,983	14.0	560,655,665	40.3
1895	85,035,218	17.0	317,906,816	63.6	34,908,723	7.0	61,894,218	12.4	499,744,975	39.4
1896	94,638,178	17.4	344,355,492	63.2	39,436,059	7.2	66,363,273	12.2	544,793,002	39.0
1897	99,451,605	16.2	382,610,975	62.2	46,993,644	7.7	85,670,912	13.9	614,727,136	36.4
1898	116,129,227	16.0	437,426,637	60.0	56,187,309	7.7	118,782,172	16.3	728,525,345	35.5
1899	125,599,418	16.9	449,801,525	60.5	60,849,993	8.2	107,099,201	14.4	743,350,137	36.7
1900	110,952,069	13.7	507,930,476	62.5	78,225,405	9.6	115,470,796	14.2	812,578,746	36.4
1901	142,905,886	16.9	516,929,035	61.1	79,212,568	9.4	106,161,392	12.6	845,208,881	34.7
1902	101,759,175	13.7	479,193,385	64.6	80,151,390	10.8	80,503,075	10.9	741,607,025	34.7
1903	87,434,556	11.9	492,874,449	67.0	73,381,403	10.0	81,657,370	11.1	735,347,778	34.7
1904	89,068,206	12.1	493,705,709	67.0	71,237,484	9.7	82,820,876	11.2	736,832,275	33.8

Table No. 7 gives the total value of all imports through these four ports, from 1878 to 1904, inclusive, with percentages in each case to the group and in case of New York to the total imports of the United States.

TABLE No. 7.

Year.	Baltimore.	Per cent.	Boston.	Per cent.	New York.	Per cent.	Philadelphia.	Per cent.	Total.	Percentage of N.Y. to Total Imports U. S.
1878	$16,899,855	4.6	$40,268,023	10.9	$292,797,559	79.3	$19,333,496	5.2	$369,298,933	62.7
1879	14,017,604	3.7	40,448,791	10.6	302,349,053	79.3	24,377,271	6.4	381,192,719	64.9
1880	19,945,989	3.4	68,503,136	11.7	459,937,153	78.7	35,944,500	6.2	584,330,778	68.9
1881	16,189,816	3.0	61,960,103	11.3	435,450,904	79.7	32,583,106	6.0	546,183,929	67.8
1882	14,938,258	2.4	69,594,057	11.4	493,060,891	80.6	34,136,579	5.6	611,729,785	68.0
1883	14,599,179	2.4	72,552,075	11.7	496,005,276	80.4	33,738,556	5.5	616,895,086	68.6
1884	11,423,665	2.0	65,865,551	11.4	465,119,630	80.8	33,657,216	5.8	576,066,062	69.7
1885	11,849,696	2.5	53,445,929	11.2	380,077,748	80.0	29,919,019	6.3	475,292,392	65.8
1886	11,696,944	2.2	58,430,707	11.1	419,338,932	79.7	36,561,313	7.0	526,027,896	66.0
1887	12,535,920	2.2	61,018,330	10.7	456,698,631	80.1	39,952,349	7.0	570,205,230	66.0
1888	11,741,585	2.0	63,897,778	10.9	470,426,774	80.0	41,772,121	7.1	587,838,258	65.0
1889	15,223,844	2.5	66,731,023	11.1	472,153,507	78.3	48,528,602	8.1	602,636,976	63.4
1890	13,140,203	2.0	62,876,666	9.7	516,426,693	79.9	53,936,315	8.4	646,379,877	65.4
1891	20,555,687	3.0	71,212,614	10.3	537,786,007	78.1	59,427,890	8.6	688,982,198	63.7
1892	13,418,523	2.0	71,780,489	10.5	536,538,112	78.7	60,006,791	8.8	681,743,915	64.8
1893	16,150,946	2.3	79,357,654	11.2	548,558,593	77.2	66,122,147	9.3	710,189,340	63.3
1894	11,978,900	2.2	50,309,331	9.5	415,795,991	78.2	53,726,963	10.1	531,811,185	63.5
1895	12,260,706	2.0	66,889,118	11.0	477,741,128	78.9	48,802,676	8.1	605,693,628	65.3
1896	13,476,630	2.1	79,179,864	12.4	499,932,792	78.5	43,840,836	7.0	636,430,122	64.1
1897	11,371,193	1.8	90,178,419	14.3	480,603,580	76.3	48,072,672	7.6	630,225,864	62.8
1898	8,907,118	1.8	51,475,094	10.4	402,281,050	81.4	31,419,997	6.4	494,083,259	65.3
1899	9,151,155	1.6	52,007,960	9.2	465,559,650	82.0	41,222,528	7.2	568,031,293	66.8
1900	19,045,279	2.8	72,195,939	10.6	537,237,282	79.0	51,866,002	7.6	680,344,502	63.2
1901	18,899,473	2.9	61,452,370	9.4	527,259,906	80.4	48,043,443	7.3	655,655,192	64.1
1902	22,825,281	3.3	71,921,436	10.3	559,930,849	79.9	45,750,342	6.5	700,427,908	62.0
1903	27,803,167	3.5	86,310,586	10.9	618,705,662	78.0	59,095,431	7.6	792,814,846	60.3
1904	20,345,788	2.7	80,657,697	10.7	600,171,633	79.5	53,890,106	7.1	755,064,624	60.6

The rate disturbances out of which this investigation grew were occasioned primarily by a dispute over the differential on ex-lake grain. While that subject was before the Commission in 1897 and incidentally referred to in its report in that case it was not examined in detail. The facts in reference to this traffic are as follows:

Grain is carried by rail from various points of origin to different western ports upon the Great Lakes like Chicago, Milwaukee and Duluth, from whence it is transported by vessel to various eastern lake ports of which the principal one is Buffalo. Tariffs are so arranged that grain moves from nearly all points in Kansas and territory north via the Great Lakes.

Flour also takes to a very considerable extent the same route. Mills at interior points like Minneapolis ship to the lake and from thence by water and rail to the seaboard. Since the cost of transportation during the season of navigation is less by this route than by the all-rail route, large quantities of traffic seek this avenue. The following table No. 8 gives the receipts of flour and grain at Buffalo from 1873 down to and including 1904, as reported by the Buffalo Chamber of Commerce.

TABLE No. 8.

Year.	Flour, Barrels.	Wheat, Bushels.	Corn, Bushels.	Oats, Bushels.	Rye, Bushels.	Barley, Bushels.	Total Grain, Bushels.
1873	1,259,205	30,618,372	28,550,828	5,972,346	906,947	1,232,507	67,281,000
1874	1,693,585	20,778,572	24,974,548	5,396,781	167,301	1,154,948	52,472,150
1875	1,810,402	32,967,656	22,593,891	8,494,124	222,126	916,889	65,194,686
1876	807,210	19,324,612	20,939,853	2,397,257	761,795	2,615,081	46,038,598
1877	693,044	23,284,405	33,362,866	4,279,229	1,055,003	1,652,568	63,634,071
1878	911,980	35,419,136	35,133,853	5,122,972	2,135,007	1,375,184	79,186,152
1879	807,105	37,788,501	32,990,903	1,104,793	1,884,802	600,740	74,369,829
1880	1,317,911	40,510,229	62,214,417	649,350	743,451	335,925	104,453,372
1881	1,051,250	18,495,320	34,434,830	4,565,737	22,210	282,510	57,800,607
1882	1,199,350	26,050,030	21,664,530	1,650,170	767,360	701,500	50,833,590
1883	2,071,570	24,105,420	34,975,040	3,226,900	2,830,830	583,890	65,722,080
1884	2,615,510	32,469,710	18,538,340	3,174,730	2,247,060	534,130	56,963,970
1885	2,903,280	27,130,400	21,028,230	767,580	309,370	577,230	49,812,810
1886	4,582,190	41,430,440	29,155,370	1,014,670	126,630	787,730	72,514,840
1887	4,001,360	48,111,180	30,189,490	4,656,280	304,540	1,474,570	84,720,910
1888	5,244,930	27,548,110	36,422,270	7,897,310	513,720	842,090	73,223,500
1889	5,480,710	26,051,600	47,127,150	14,309,800	1,906,760	1,474,510	90,869,880
1890	6,245,580	24,868,630	44,136,060	13,860,780	1,281,630	5,165,700	89,312,800
1891	7,093,340	76,945,960	29,616,390	12,454,150	5,603,400	4,273,120	128,893,020
1892	9,746,120	78,343,560	32,377,780	16,500,250	1,316,530	4,600,970	133,139,090
1893	10,562,090	68,243,750	40,539,970	20,700,150	644,590	5,791,460	135,919,920

1894	11,488,530	50,194,130	29,078,520	15,560,230	501,195	8,625,090	103,959,165
1895	10,005,258	47,437,280	37,607,211	22,056,339	935,855	10,461,790	118,498,475
1896	10,384,184	54,411,207	47,811,010	40,107,499	4,404,354	16,697,744	163,431,814
1897	12,440,617	56,565,610	56,932,625	64,140,618	7,213,650	14,548,100	199,400,603
1898	10,371,653	83,872,837	67,950,073	45,501,233	6,821,694	11,391,332	215,537,169
1899	9,088,873	48,008,014	53,843,327	26,469,401	2,260,865	15,110,672	145,692,279
1900	11,463,079	47,826,458	63,192,660	28,422,256	1,314,743	9,868,196	150,624,313
1901	11,053,439	61,294,248	30,539,848	21,438,545	1,256,284	7,687,239	122,216,164
1902	12,026,616	62,452,696	22,487,454	15,891,387	3,716,628	8,969,865	113,518,030
1903	11,243,027	40,455,328	43,364,979	30,976,088	3,216,983	10,681,655	128,695,033
1904	6,160,965	26,270,000	27,898,000	19,124,000	1,736,600	15,665,000	90,693,600

While receipts of grain and grain products at Buffalo are much greater than at other eastern lake ports still there is a substantial movement to Erie, Pennsylvania, and a smaller movement to Fairport, Ohio, in addition to a large movement through the Welland Canal to points east of Buffalo. It will be seen, therefore, that this traffic has been for many years and is still of very great volume.

Flour shipped by the lake and rail route always moves from the point of origin to the Atlantic seaboard upon a through bill of lading at a through rate; when the destination is a foreign one the shipment is usually upon a through bill to the foreign point. While, therefore, large quantities of this flour are stored at Buffalo and other lake ports temporarily before being taken forward by rail, this storage is merely an incident to the carriage. The traffic in no sense originates at Buffalo. All these through lake-and-rail rates on flour whether for export or for domestic consumption recognize a differential of two and three cents to Philadelphia and Baltimore.

In the handling of grain this is entirely different. The shipment from the point of origin to the lake port is a local transaction. The transportation from the western lake port to Buffalo is another independent transaction and the grain is then taken from Buffalo to the seaboard, whether for export or for domestic consumption, at a new rate, which is usually termed an ex-lake rate, and which applies to grain which has reached Buffalo via the lakes. The actual rate at which this grain moves for export is one applicable to lots of 8,000 bushels and is so much per bushel. The question before us is, should this export rate be the same to all the ports, or should Baltimore or Philadelphia enjoy a differential upon this as they do upon all-rail grain?

This ex-lake business was not referred to in the agreement of 1877 nor was it mentioned in the Fink Report or the award of the Advisory Commission. The reason for this is not very clear. It appears from the table above given that in 1877 the receipts of flour at Buffalo were 700,000 barrels and of grain in round numbers 63,000,000 bushels, and we know from further evidence in the case that nearly 6,000,000 bushels of grain were

handled that year through the port of Erie where the Pennsylvania Railroad had constructed an elevator as early as 1869. Mr. Guilford indicates that this grain was carried mostly by canal in these early days, but the tables in evidence show that only 39,000,000 bushels of wheat and corn were received by canal at New York during the year 1877 against 63,000,000 received at Buffalo, and that in 1880, 68,000,000 bushels of wheat and corn reached New York by canal while the receipts at Buffalo were 104,000,000 bushels. It is possible that Philadelphia and Baltimore lines did not at that time have working arrangements by which they could reach Buffalo; at any rate this ex-lake differential evidently was not a thing of importance until about 1890. Mr. Guilford states that the railroads determined to compete with the canal for this Buffalo grain in 1891 and that this brought the differential into prominence. Mr. Thayer, testifying for the Pennsylvania Lines, states that an agreement was formed as early as 1889 by which a differential was allowed to Philadelphia and Baltimore upon this ex-lake grain, not to exceed the amount of the all-rail differential. According to the testimony of Mr. Guilford the differential from about 1891 to 1895 was one-half cent per bushel on heavy grains. In 1895 rates were badly demoralized and no fixed schedule was maintained, but in 1896 the Joint Traffic Association, which had been organized for the purpose of fixing and maintaining rates, established a differential of 1 cent per bushel on ex-lake grain in favor of Baltimore and Philadelphia. This continued in effect until 1898 when the Joint Traffic Association reversed its former holding and abolished the differential altogether. Witnesses for New York stated that from this time until the fall of 1903 no differential was allowed Philadelphia or Baltimore from Buffalo or Erie. Mr. Thayer states that the differential was abolished on cargo shipments in 1898 but that it continued to be applied to berth shipments until 1900.

We are inclined to think that a differential was insisted upon and generally taken, when rate conditions permitted, by the Philadelphia and Baltimore lines until the action of the Joint Traffic Association in 1898. It may be that this differential was still applied for some little time by Philadelphia and Baltimore

lines to berth business. For a time Philadelphia lines remitted the elevator charges at that port on ex-lake grain. From 1900 to the fall of 1903 no differential was claimed in favor of Baltimore and Philadelphia from either Buffalo or Erie, but it appears that the Baltimore & Ohio, which owns an elevator at Fairport, Ohio, took during all that time a differential of $\frac{4}{10}$ of one cent per bushel upon Baltimore shipments through that port.

It may be generally remarked with respect to these ex-lake rates that competition was strong and that rates were in consequence very much demoralized until the formation of what has been known as the Buffalo Grain Pool. This is an association of lines transporting grain from Buffalo to New York through which the traffic is divided in given proportions. It was said in this case, and had appeared in former investigations by this Commission, that previous to the organization of this committee or association, grain had been carried from Buffalo to New York and Boston at as low as $2\frac{1}{2}$ cents a bushel, but since the establishment of this arrangement rates have been advanced and well maintained. Philadelphia and Baltimore lines have at no time been parties to this organization but have apparently maintained the rates established by it.

The distance from Buffalo to New York, Philadelphia and Baltimore is almost exactly the same being about 400 miles. Buffalo is not in differential territory and so far as we can learn no differential rates prevail to the various ports. Large quantities of ex-lake wheat are ground at Buffalo, but the product in all cases goes forward whether for domestic consumption or export at the same rate to the three ports.

The Baltimore & Ohio Railroad Company owns and maintains an elevator at Fairport, Ohio, as just said, through which it handles a limited quantity of ex-lake grain. There appears to be considerable elevator capacity at Erie, Pennsylvania, and both the Baltimore & Ohio and the Pennsylvania handle grain through this lake port. The quantity so handled is considerable, having been as high as 16,000,000 bushels per year; but this movement seems to have declined in recent years and was always insignificant in comparison with Buffalo. Fairport and Erie

are both in differential territory, but it seemed to be the opinion of all witnesses that upon export grain the rate from the three ports should be the same.

The table below gives in percentages the receipts from 1892 to 1903 inclusive, of ex-lake grain at New York, Philadelphia and Baltimore.

TABLE NO. 9.

Year From	To New York Buffalo.	To Philadelphia. Erie.	Buffalo.	Total.	To Baltimore. Erie.	Fairport.	Total.
1892	74.8	9.4	5.1	14.5	9.9	.8	10.7
1893	65.7	14.4	7.2	21.6	12.4	.3	12.7
1894	67.1	10.6	14.5	25.1	6.8	1.0	7.8
1895	88.8	1.8	4.5	6.3	4.7	.2	4.9
1896	68.9	5.7	10.7	16.4	6.6	8.1	14.7
1897	75.4	5.1	6.2	11.3	6.4	6.9	13.3
1898	77.4	6.0	9.0	15.0	4.1	3.5	7.6
1899	82.0	6.2	9.1	15.3	1.4	1.3	2.7
1900	76.4	5.8	8.8	14.6	4.5	4.5	9.0
1901	84.7	2.2	10.2	12.4	.1	2.8	2.9
1902	77.0	2.0	16.4	18.4	3.2	1.4	4.6
1903 6 mos	82.0	2.4	12.8	15.2	2.8		2.8

It was said on behalf of Boston that the elevation charges at that port were higher than at Baltimore and Philadelphia, and such appears to be the fact. The elevation charge at the two latter cities is three-fourths of a cent per bushel, including free storage for the first twenty days, while for the same service at Boston the charge is nine-tenths of a cent per bushel. Against this, however, is an offset which leaves a difference against Boston of .12 of a cent per bushel. We understand that the elevators at Boston are owned and operated by the railroads.

On the part of Baltimore and Philadelphia it was urged that the cost of insurance was greater from those ports than from Boston or New York. It appears that the quoted rates are the same from all four ports, but from actual transactions it rather seems that in many instances marine insurance is higher from Baltimore and probably Philadelphia than from the other two ports. This would be in the long run a real disadvantage

against these ports, but there is no testimony in this case from which we can place any exact figure upon that disadvantage.

Considerable testimony was introduced to show that in the past rates had not been maintained. This is a matter of common knowledge. It appeared in the former investigation before us that for a short time after the Act to regulate commerce took effect published schedules were fairly well observed and that for a few weeks and perhaps months after the organization of the Joint Traffic Association these grain rates were pretty well maintained; but it was practically conceded that at all other times they had been more or less departed from. It is our impression, however, that there has at all times been a substantial difference in favor of the differential ports. There was upon the published schedule an actual differential and lines leading to Baltimore and Philadelphia have probably departed as much from the rate as their competitors to New York. At the same time, as we observed in the former case, the fact that rates have not been maintained has made it impossible to determine the actual effect of these differentials upon the movement of this traffic. It is now said that since the spring of 1902 rates have been maintained and we are inclined to the opinion that these grain rates in the main have been.

This investigation nominally covered import as well as export traffic and some testimony was introduced by the New York interests upon this branch of the inquiry; but no evidence on this point was offered by the other ports and the subject has been scarcely referred to in argument. Under these circumstances it would not be profitable to attempt any discussion of that matter.

Conclusions.

The controversy before us relates to what are known as the "Port differentials" and is one of long standing. The dispute began when rival lines of railway, first connected the west with the four Atlantic ports involved. It has produced numerous rate wars, has been the subject of arbitration, has been considered by this Commission upon complaint of one locality and is now

under investigation by us again at the general request of the four ports especially interested and of many interior shippers.

The question itself is readily comprehended. That section bounded on the east by a line drawn from Pittsburg to Buffalo, on the south by the Ohio River, on the west by the Mississippi River and on the north by the Great Lakes and a line drawn west from Chicago to Dubuque is known as differential territory. Rates between points in this territory and New York city are based upon the Chicago-New York rate; that is, the rate between any point in this territory and New York is either the same as the Chicago rate or a certain percentage of that rate. To other points upon the Atlantic seaboard the rate is higher or lower than that to New York by a given number of cents per hundred pounds. Rates upon all classes and all commodities, with the exception of grain and iron articles, are 2 cents lower to Philadelphia and 3 cents lower to Baltimore than to New York. To Boston rates are the same as to New York on export traffic while on domestic traffic they are higher by arbitrary amounts ranging from 7 cents per hundred pounds on first class to 2 cents on sixth class and most, if not all, commodities. These arbitrary differences above or below the New York rate are termed in this proceeding differentials. No question is made as to the propriety of these differentials on domestic traffic but it is insisted that they should not be allowed on export business.

It should be observed that while these differentials apply in theory only to traffic from differential territory they in fact apply to all traffic which passes through this territory. A glance at the railroad map of the country shows that this includes virtually all traffic which, originating west of Buffalo and Pittsburg, passes out through the Atlantic ports north of Norfolk; and it will further be seen by reference to the tables given in the findings of fact that this embraces a very considerable part of the rail movement by which our entire exports reach the seaboard.

When the Commission examined this subject in the *Produce Exchange Case,* 7 I. C. C. Rep. 612, its only function was to determine whether the Act to regulate commerce had been violated. Our relation to the subject to-day is a broader one, certainly if

we comply with the request of the petitioners at whose instigation this proceeding was instituted. We are to say, not whether these differentials are lawful merely, but whether on the whole, considering the interests of all parties, they are fair. Counsel for the city of New York in commenting upon this remarked that this controversy might, therefore, for the first time be settled upon correct fundamental principles. We have endeavored to find some fundamental principle by the application of which this dispute might be laid at rest, but entirely without success. It is said that a fair differential is one which would give to these several ports the traffic to which they are entitled. It is also said that these several ports are entitled to what of this traffic they can obtain under a fair differential. New York urges that its facilities upon the ocean must not be interfered with, while Baltimore and Philadelphia assert with equal positiveness that they must not be deprived of their advantages upon the land. While there is no fundamental principle, however, which can be applied there are certain fundamental considerations which should be kept in mind.

If it can be properly done, these ports should all be kept open for the transaction of this export business upon such terms that each one may fairly compete for it. No marked advantage should be given, certainly not by the creation of artificial conditions, to any one port over the other. The ideal condition would be the establishment of such rates that enterprise at either port in the way of improvement in service or facilities might be rewarded by increased business and that there might exist that healthy struggle of locality against locality which is the best security for proper commercial development. This is justly demanded by the interests of the communities involved.

In disposing of this question the interests of the carriers which serve these communities should be none the less kept in view. If, again, it can be properly done, these rates should be so adjusted that this competitive traffic will be fairly distributed between the different lines of railway which serve these ports. Each one of these four cities is reached by two or more great railway systems. The prosperity of these cities and systems cannot be separated. The ability of a railroad to adequately dis-

charge its duty for a reasonable charge depends upon the business which it can obtain, and no one of these systems should be deprived of its fair portion of this enormous export traffic. The purpose of these differentials from the first has been to distribute this business between the different carriers and we said in our former report that this was not improper unless the means used were improper.

It should be noted that this discussion is confined entirely to the four ports, Boston, New York, Philadelphia and Baltimore. While others are directly affected by these differentials they have not been represented upon this hearing and are not considered except in so far as it may be necessary to keep in mind the effect of our conclusions here upon conditions elsewhere.

No fact has been more persistently urged upon our attention than the location of Baltimore and Philadelphia, as compared with New York and Boston in point of distance. Baltimore is 111 miles and Philadelphia 90 miles nearer than New York to Chicago. The greater part of the traffic to which these differentials apply does not originate at Chicago, but we have seen that Chicago may be taken as a representative point of origin without injustice to New York. This difference in distance, if there were no competitive conditions, would justify a lower rate to Philadelphia and a still lower rate to Baltimore.

These differentials have undoubtedly been established in the past with a view almost entirely to their influence upon the movement of export business. It is, however, of importance that rates between these cities and the West should be fairly adjusted with respect to domestic traffic. If the supplies with which the artisans of Baltimore work and upon which the population of Baltimore lives are transported for a less cost from the West to Baltimore while the products of its factories are sent back at a less cost to be consumed in the West, this would be an important element making for the prosperity of that locality as compared with other localities where the cost of transportation was more. Now if there had been no export business in the past, if these domestic rates had been adjusted solely with a view to what was right between the communities, it is altogether probable that the differentials in favor of Baltimore and Philadelphia would have

been even greater than they are to-day. When the differential on grain was reduced in 1899 and again when that on iron articles was halved in 1904, the former differences on domestic rates were left in effect. There can be little doubt, and we have so stated in the findings of fact, that a fair recognition of the advantage of these two southern ports in the matter of distance would entitle them to as great a differential as three cents to Baltimore and two cents to Philadelphia.

It should be further noticed that not only have these communities, when considered as points of final destination, a right to a lower rate than New York on traffic from this territory, but the carriers which transport that traffic may properly exact from shippers to New York a higher rate, if they see fit. The Pennsylvania Railroad is the short line to New York. Traffic over that line for New York passes through Philadelphia and 90 miles beyond. The expenses of delivery at New York are materially more than in Philadelphia. There is no just principle which would compel this company against its will to apply at New York the same rate as at Philadelphia when the cost of rendering that service is distinctly greater. It might as a matter of competition see fit to do so, but it could not with justice be compelled to.

If these differentials fairly recognize the advantages of Baltimore and Philadelphia, upon what theory can they be reduced or abolished? It is said that these cities labor under certain disadvantages in the way of water transportation as compared with New York and Boston. Now, what can be more just than to give to each port the inland rate to which its location entitles it and to let it obtain such portion of this export traffic as its ocean facilities can win for it? Does not this award to each locality the exact benefit of its location and is not any other rule to an extent unjust?

The answer is found in the fact that this traffic does not stop at the seaboard but is carried to foreign destinations. The port of export is but a single station as it were upon the through line.

This traffic in point of fact originates at a great number of interior points and reaches numerous foreign destinations, but we may assume for the purpose of illustration that it all comes

from Chicago and all goes to Liverpool. It is apparent that it may be transported between these points by any of the four ports in question. The distance by rail is somewhat shorter to Baltimore and Philadelphia than to Boston and New York. Upon the other hand the water distance is somewhat less from Boston and New York than from Philadelphia and Baltimore. The entire through distance does not greatly vary. In other words this traffic is fairly competitive and rates ought, therefore, to be so adjusted that rival routes can fairly compete for it.

Apply for a moment the rule suggested by Baltimore and Philadelphia to the movement of this traffic. The domestic rate to Baltimore is three cents lower and to Philadelphia two cents lower than to New York. The domestic rate to Boston is two cents higher than to New York upon low grade freight and considerably more upon the higher classes. Now, what would be the result if carriers were compelled to charge their domestic rates upon export traffic? Plainly it would shut up the port of Boston. This fact has been obvious from the first, and it has always been conceded that export rail rates to Boston might be lower than domestic rates and not higher than export rates to New York. This was so specified in the agreement of 1877. It was recognized as necessary by the award of the Advisory Commission. It has been formally approved in two instances by this Commission; *In the Matter of the Export Trade of Boston,* 1 I. C. C. Rep. 24, 1 Inters. Com. Rep. 25; *Kemble* v. *Boston & Albany Railroad Company,* 8 I. C. C. Rep. 110. Nothing can be more certain than that these inland rates upon export traffic should be treated as a part of the entire through rate.

The real question is on what basis shall rates be equalized through the various ports. New York and Boston insist that the through rates should be made the same in amount by all the ports. The through rate is made by adding together the inland rail rate from the interior to the port of export and the water rate from the port of export to the foreign destination. These localities contend that if the water rate from a given port is higher the rail rate to that port may be correspondingly lower, but only sufficiently lower to make the through rate the same. They further contend that water rates are in fact substantially

the same from Baltimore and Philadelphia as from Boston and New York, and that, therefore, the inland rail rates to those ports should also be the same. Baltimore and Philadelphia urge that there are certain advantages at New York and Boston in the water route which upon the same through rate would attract traffic to those ports at their expense, and they urge that these advantages shall also be equalized so that not the through rate but the advantages of transportation through the several ports shall be made equal.

The purpose is to permit these carriers and the ports which they serve to compete for this traffic. The rates are to be so adjusted that there can be fair competition for this business via all the ports, so that no one shall possess a distinct advantage over the other. To accomplish this result Boston is allowed to charge a lower export rate than its domestic rate. New York is also permitted in some instances to apply a lower differential to export than is fixed for domestic traffic. Now, when New York is allowed to reduce this differential on export traffic there is taken away from Baltimore a part of its natural advantages for the benefit of New York in order that New York may compete for this traffic. But just as Baltimore has an advantage in distance, so New York has certain advantages in ocean facilities. If now Baltimore is required to sacrifice its superiority upon the land for the benefit of New York why should not New York be required to give up some portion of its superiority on the water for the benefit of Baltimore?

We do not wish to be understood as saying that this principle should be extended to the making of rail rates between competing lines. It may be that in such case the rate by every line should be the same and that each line should sustain whatever disability it has. If in this case it were possible to definitely establish the same through rate by all these ports, if it ever had been possible to do so, the advisability of such an adjustment would deserve serious consideration. It is, however, impossible to apply that rule in fact. The ocean rate from every port is continually fluctuating and is seldom the same for two days in succession. It even varies from hour to hour. The rate may be higher from Baltimore to-day and from New York to-morrow.

It cannot, therefore, be determined what inland differential would produce equal rates through all the ports.

It would be impossible to make the same rate through all these ports unless some system like that applied by southern lines to the exportation of cotton were adopted. Under that system there is a published inland rate to the several ports, but that rate is seldom observed. The ocean rate from the various ports is ascertained. To this rate is added the published inland rate from a given point to the various ports and the rate is said to "make" by that port which has the lowest combination. Any carrier is now at liberty to apply this combination through any other port, paying whatever it may find necessary for ocean transportation from that port and retaining the balance of the quoted rate for its own service. In this way, rates are in theory the same via all the ports.

No such system could be applied to this traffic through the ports in question without dire confusion. Under it there can be no such publication of the rate as is required by the Act to regulate commerce. There can be no maintenance of a fixed inland rate. The traffic must in all cases be moved upon a through bill of lading and the destination must be known when the rate is quoted and the traffic billed. In actual practice grain moves to the seaboard for export before it has been sold abroad, and it was stated upon this hearing that the same was true of flour. There is no suggestion that such a system could or would be adopted, and without it an equal through rate is impossible until ocean rates are named and maintained in the same way that inland rail rates are.

While, however, it would be impossible to secure by the application of any inland differential the same rate through all the ports it would be possible to say with confidence that if this were the proper basis of making the differential the present differentials are too high, for they undoubtedly exceed the difference in ocean rates. In our opinion they always have from the very first. While the Thurman Commission reported that rates from Philadelphia and Baltimore were higher than from New York by an amount substantially equaling the differentials, Mr. Fink, a much closer observer, with much better means of information,

stated in his report of 1881 that the difference in ocean rates was only about one-half the differential from Philadelphia, and something more than one cent less than the differential from Baltimore. This Commission found upon the former hearing that the difference in ocean rates did not equal the differentials. We have now expressed the belief in our findings of fact that for the last seven years the difference in ocean rates has been materially less than the differentials. During all this time the inland differential has been in effect and for the last two or three years it has been strictly observed. It must follow, therefore, that the rate through Baltimore and Philadelphia has been distinctly lower than the rate through New York.

During all this time the ocean rate has been the result for the most part of free competition. Ships from Baltimore have obtained the highest rate possible. If inland differentials were made the same now to all these ports what must happen? Clearly the ocean rate must be lower from Baltimore and Philadelphia than from New York, for the through rate must be lower. There is no reason to suppose that an equal rate would take traffic in the future which has only moved on a lower rate in the past. The real question is, therefore, whether ships would continue to come to Baltimore and Philadelphia if they were obliged to accept lower rates from those ports than obtained from New York.

It is not to be supposed that every ship would leave Baltimore and Philadelphia at once, nor that every ship would ever forsake those ports. But vessels are not like railways; they can be taken to the best market. It fairly appears that in order to attract shipping, the ocean rate must be somewhat higher from Baltimore and Philadelphia than from Boston and New York. The reasons for this have been stated in our findings of fact and need not be repeated.

It has been said that equal rates through all the ports have never prevailed. To this the operation of the minimum freight agreement affords a brief exception. From January 1, 1902, until May 26, of the same year rates from all the ports to Great Britain were the same, so that the through rate was lower via Baltimore and Philadelphia by the full amount of the differ-

ential. On May 26, ocean rates from these ports were advanced by the amount of the differentials, thus making the through rate from the interior point to the foreign port the same, and this continued in effect for a few weeks. At the expiration of that time a readjustment of ocean rates was made so that the through rates via Baltimore and Philadelphia were lower than through the ports of New York and Boston by about one-half the differential, differing somewhat with different commodities. So far as this experience proves anything, it seems to show that while rates were lower through Baltimore and Philadelphia by the full amount of the differentials, traffic was unduly diverted from Boston and New York and that when the through rate was made the same via all the ports there was an undue diversion to New York.

In view of the fact that Baltimore and Philadelphia have natural advantages in location, that Boston and New York have certain natural advantages in the way of ocean facilities, that it is impossible to make and maintain the same rate through all the ports, we think the true inquiry in adjusting this differential is, what will equalize the advantages of transportation through these various ports. What part of the advantage which Baltimore and Philadelphia enjoy on the score of the inland haul shall they be allowed to retain to compensate them for their disadvantage in the water haul.

The most important factor in determining the route is undoubtedly the rate. It was said in testimony upon the former investigation and has been repeated in this that a difference of from one-fourth to one-eighth of a cent a bushel will determine the port by which grain shall be exported. Other traffic is not equally sensitive, but it must follow with respect to this low grade freight that the through rate by all lines should be substantially the same. There are, however, other considerations. The item of insurance, quicker and more reliable service, more frequent sailings, the ability to reach a greater number of ports, superior banking facilities and better storage facilities all influence the movement of this traffic and in all these respects New York is superior to its competitors. The elements which enter into the problem are so various and so complex that it is mani-

festly impossible by any *a priori* process of reasoning to determine what inland differential will equalize all these advantages and disadvantages. This was the conclusion of Mr. Fink, of the Advisory Commission, and of this Commission upon the former investigation. It is our conclusion now. The best that can be done is to examine the effect of these differentials. They have been in operation for almost thirty years. They have not been during a large portion of that time strictly observed, during some portions of it probably not much observed; but there has been running through the whole period what amounts to an average observance, and for the last two or three years they have been well maintained. What does the result fairly show? Does this competitive traffic move through these ports freely or do these differentials give to Baltimore and Philadelphia a distinct and unfair advantage over New York and Boston?

In the examination of the statistics showing this movement, certain things should be kept in mind.

The total amount exported through these ports must decrease as compared with the total exports of the whole country. A glance at the map of the United States will show that the points at which these exports originate are much nearer the Gulf than the Atlantic ports. In the early days of this business the South was prostrate from the effects of the Civil War. It had no railroads worth the name. Today many lines of railway connect the grain fields and packing houses of the West with Galveston and New Orleans and the gradients and cost of operation upon those lines are such that traffic can be transported almost as cheaply per mile as to the Atlantic seaboard. These railroads are bound to carry a large part of this traffic to the Gulf. An examination of Table No. 3 shows the extent to which our grain and flour exports are being diverted from the Atlantic seaboard to the Gulf ports. Again within a comparatively few years Norfolk and Newport News have become important ports of export. Strong lines of railway have reached deep water at these points, have provided extensive facilities for the handling of this business, and will certainly insist upon a portion of it.

The history of the Erie Canal has an important bearing upon this question. In the early days of the export grain movement

the Great Lakes and the Erie Canal formed the cheapest avenue of transportation to the seaboard. At one time more than half the grain which reached the city of New York came by canal. It was that which gave New York its prominence as a grain exporting port. Today the canal has almost ceased to be a factor in this situation and the effect of this upon the exports of that port must not be overlooked. As we suggested in the former case, New York has no vested right to the handling of this grain. The railroads which serve New York can no more claim to carry the grain which formerly went by canal than those leading to Philadelphia and Baltimore. With the dropping out of the canal there disappeared a factor which made powerfully for the port of New York. When the improvements to the Erie Canal which are contemplated are completed so that that water-way becomes once more an actual carrier of traffic, the effect will undoubtedly be to greatly increase the exports of grain and flour from that port in comparison with the other three ports involved in this hearing.

No comparison by single years is of much value. The causes which operate to induce a considerable movement of grain through one port and and not through another are so various that no inference can be safely drawn from the history of a single season. The failure of a crop in a particular locality; the presence of large quantities of other freight at a particular port may have this effect. The last year upon which we had the statistics on the former hearing was 1896. New York stood aghast at the falling off in its exports of grain for that season. The differential continued the same through 1897 and 1898, and yet we find that the percentage of New York had returned by the latter year to substantially its normal figure. Counsel for New York stated that the effect of the ex-lake differential was especially noticeable and yet it will be seen upon referring to Table No. 9 that in 1897 when the differential of one cent a bushel established by the Joint Traffic Association was in effect, Philadelphia obtained but 11 per cent of the ex-lake grain, being the smallest with the exception of 1895 for the twelve years given in that Table.

An examination of these statistics seems to show that, beginning with the year 1878, the first full year after these differ-

entials had been established by the agreement of 1877, and coming down to the year 1894, New York has sensibly declined in comparison with the four ports considered as a whole, and that each of the other three ports has somewhat increased in comparison with New York. Boston at first gained, but for the last eight years has lost; Philadelphia at first lost and latterly has gained; Baltimore has fluctuated at different times, but on the whole is a substantial gainer. The decline of New York is, however, largely associated with the falling off in its canal traffic; thus, in the year 1878 the total number of bushels of wheat, corn, and flour, in bushels, exported through New York, Boston, Philadelphia, Baltimore, Norfolk, and Newport News was, according to a table quoted in the brief of New York, 175,000,000, in round numbers. Of this New York exported 54.1 per cent; Boston, 6.8 per cent; Philadelphia, 16.7 per cent; Baltimore, 22.3 per cent; Norfolk and Newport News, nothing. In the year 1903 the exports through the same ports were 135,000,000 bushels; of which New York had 37.5 per cent; Boston, 9.6 per cent; Philadelphia, 17.4 per cent; Baltimore, 28.1 per cent; Norfolk, 1.1 per cent, and Newport News, 6.3 per cent. In 1878 the canal brought to New York 64,000,000 bushels, while in 1903 it brought only 13,000,000 bushels. New York is still well in advance of any other one port. In the year 1903 it exported 44.4 per cent of the grain, 38.2 per cent of the flour, and 62.7 per cent of the provisions passing out through the four ports. It should be remembered that the effect of these differentials is confined to low-grade traffic; practically all of the higher classes of freight still moves out through New York. It was said with truth upon the argument that the value of the exports and imports passing through a particular port has little weight as showing the amount of the traffic; yet it is somewhat significant that of all exports passing out through these four ports in 1893, New York exported in value 67 per cent, and that of the imports flowing in through these four ports New York had in value, that same year, 78 per cent; of the whole United States, 60.3 per cent. It can hardly be said that there is any such marked diversion of traffic from the port of New

York as would warrant the interference of Government to prevent it.

While holding in the former case that there was no such arbitrary interference with the movement of this traffic upon the part of the carriers as would constitute a violation of the Act to regulate commerce, the Commission did feel that the differentials upon grain were probably too large. This mainly arose from the fact that from various causes set forth in that report a differential of three cents was much more potential in sending traffic through the port of Baltimore in 1897 than it had been in 1877 or in 1882. Had we been acting in that case in the capacity of an Advisory Commission, we should probably have recommended the reduction of those differentials. They were in fact reduced one-half by the voluntary action of the carriers in 1899, and we are satisfied that the differentials of one cent and one and one-half cents, which were then established and which are still in effect, are sufficiently large. We feel now that perhaps the differentials on flour should be somewhat modified. That commodity moves to the seaboard under substantially the same conditions and at practically the same cost as grain; but is probably somewhat less influenced by the ocean rate than grain. About the only thing which is made reasonably certain by the statistical tables offered in evidence is that Boston has distinctly lost and that Baltimore and especially Philadelphia have distinctly gained in exports of flour. We are inclined to think that this differential should be made two cents at Baltimore and one cent at Philadelphia. We have no knowledge whatever as to the movement of iron and steel articles, in case of which these differentials were reduced in 1904, and can, therefore, express no opinion as to their propriety.

Boston insists that if Philadelphia and Baltimore are entitled to a differential against New York it is, for the same reasons, entitled to some consideration. We found on the former hearing that ocean rates from Boston had been lower than from New York, and since the inland rate has always been the same, this must indicate that the total through rate by the port of Boston, as well as by Baltimore and Philadelphia, must be lower than through New York. It appears from the evidence in this case

that at the present time ocean rates are substantially the same from both these ports. It is, therefore, possible that in the future it may become evident that Boston cannot fairly compete for this traffic upon the present basis; but we do not feel that the record before us would justify that inference today. We desire to call especial attention to the fact that these differentials have not been fully observed for a sufficient length of time to indicate exactly what their effect may be when strictly maintained through a series of years.

The immediate cause of this investigation was the controversy over the differential on ex-lake grain. That question was incidentally referred to in the former case, but not much considered. It was there said that this grain originated at the same point, whether it reached the port of export by the all-rail or the lake and rail route, and that since the purpose of the differential was to distribute the traffic between the different ports, the same reason which justified a differential in one case would apply in the other. It would follow from this reasoning, that the differential in both cases ought to be the same.

Further reflection leads to the conclusion that the position taken in that opinion is not altogether tenable. The origin of the grain is the same in both cases and the traffic is therefore strictly competitive. It should not be regarded as originating at Buffalo since it is only there temporarily in transit; but there is another feature of the case which deserves attention.

Distance is important as already observed only in so far as it affords a measure of the cost of transportation. One point may be nearer another in miles, but more distant in cost of carriage. Now, the cheapest route by which this grain can reach the seaboard from its point of origin in many cases is by rail to Chicago, by water from Chicago to Buffalo and by rail from Buffalo to the port of export; and this is so if we entirely disregard the Erie Canal. It is a natural advantage of the port of New York to be located on this route. By this route the distance to New York, in cost of transportation, is no greater than to Philadelphia and Baltimore. When this grain arrives at Buffalo there is, therefore, no reason growing out of the greater proximity of

Baltimore or Philadelphia to the grain fields which justifies or requires a lower rate to those ports. It has been seen, however, that the purpose of the differential is to distribute this competitive traffic between the different ports. It has also been seen that the ocean rate through Baltimore and Philadelphia is somewhat higher, except on cargo business, of which none is now done, than through the ports of New York and Boston. If this grain reaches the seaboard by the all-rail route, the advantage of Baltimore is taken away in favor of New York and Boston to the extent of one and one-half cents per hundred pounds, and we think that when the same grain arrives at Buffalo it is proper for the same reason to take away something from the ocean advantage of New York in favor of Baltimore.

This ex-lake grain may move through either Fairport, Erie, or Buffalo. Fairport and Erie are in differential territory, so that rates from these two points would be, upon the ordinary basis, lower to Philadelphia and Baltimore than to New York. But it was said in testimony that with respect to this ex-lake grain these three lake ports should be treated alike; and such is our opinion. To apply a lower rate to Fairport and Erie would be unjust to Buffalo. There is now in effect, pending the disposition of this matter by the Commission, a differential on this traffic of four-tenths of one cent per bushel in favor of Baltimore. We are inclined to think that this should be modified a little and as modified extended to Philadelphia, and we believe that if this is done the differential so enjoyed by those two ports upon this traffic will certainly not exceed the average for the last fifteen years.

It may be asked with some reason why a distinction should be made in the amount of this differential between this ex-lake traffic and that which reaches these ports by the all-rail routes. Our answer is: These four cities are all seaports. This is a fundamental advantage of location which entitles each and every one of them to participate in this export business and the public interest requires that this right shall be recognized. But each has certain subsidiary advantages peculiar to itself which should be preserved in so far as is compatible with free competition. It may well be, therefore, that Baltimore should be given a some-

what more favorable rate on all-rail than on rail-and-water traffic, for it possesses an advantage in the former case which it has not in the latter.

New York insists that the effect of these differentials is to force traffic out of natural channels into unnatural and more expensive routes, and that the final effect is to impose an enormous burden upon the public. With respect to all-rail traffic this premise of fact is not well taken. The actual cost of delivering grain into the hold of the ship from the average point of origin is probably three cents per hundred pounds less at Baltimore than at New York. The cost of the ocean transportation from Baltimore may be somewhat greater although New York and Boston have strenuously affirmed the contrary. Hence traffic which passes through New York and Boston under the operation of these differentials is forced into a more expensive route than as though it passed out through Baltimore.

With respect to this ex-lake grain, the assumption of New York may be correct, but we do not think this consideration should be controlling. To decree that traffic should always move by the cheapest route would be to entirely eliminate competition, which, within reasonable bounds, is for the interest of the general public.

It was also strongly urged upon the Commission by the representatives of New York and Boston that the desire of the lines serving those ports was to eliminate the present differentials by a reduction in the export rate to those ports, and it was said that this must, in the nature of things be a permanent reduction and that, therefore, it would result in a substantial saving to the public.

It seems probable that if the differentials were to be wiped out at the present time this would be done by applying at Boston, New York, and Philadelphia, upon export traffic, the domestic rate to Baltimore. It is also true that this export rate could not be advanced without advancing the Baltimore domestic rate, since it would be impossible to maintain at that port a higher rate on export than on domestic business. But what possible guaranty is there that the domestic rate at Baltimore would not be advanced? In 1902 domestic rates to all these ports were

raised, and although this Commission found that the advance was unjustifiable it has been kept in effect except during the season of lake navigation. The present export rate is four cents lower than the domestic rate at New York. If that domestic rate is too high it ought to be reduced, but we do not think it would be just to the communities affected nor to the lines serving those communities, nor that in the end it would benefit the general public to deprive the ports of Philadelphia and Baltimore of the ability to compete for this traffic.

We have not considered westbound differentials applicable to import traffic since there are no facts in this record upon which to base an opinion. With respect to export differentials we conclude: that the differential on flour both all-rail and lake-and-rail should be 2 cents per hundred pounds at Baltimore and 1 cent per hundred pounds at Philadelphia; that there should be allowed both Baltimore and Philadelphia a differential of 3/10 of 1 cent per bushel on ex-lake grain; that otherwise the present differentials should remain in force. This is not a proceeding in which the Commission could make an order, nor do we intend to intimate that the facts appearing would justify an order in any proceeding. Our impression is that the above modifications would be fair to the various communities and lines of railway interested, and that it is in the public interest that these differentials should be so adjusted that all the ports and the various lines serving them may fairly compete for this traffic.

CLEMENTS, *Commissioner,* dissenting:

I cannot join in the suggestions of the majority, which are in effect recommendations for the avowed purpose of the fixing of differentials in freight rates on export traffic moving through the respective ports in question and between the competing railroads leading thereto. It is said in the report, "it has been seen, however, that the purpose of the differential is to distribute this competitive traffic between the different ports;" also "the real question is, on what basis shall rates be equalized through the various ports." Again it is said, "when the Commission examined his subject in the *Produce Exchange case* * * * its only function was to determine whether the Act to regulate

commerce had been violated. Our relation to the subject today is a broader one, certainly if we comply with the request of the petitioners at whose instigation this proceeding was instituted. We are to say, not whether these differentials are lawful merely, but whether on the whole, considering the interests of all parties, they are fair."

If this were a proceeding against a carrier reaching by its lines all of the ports in question it would be within the jurisdiction of the Commission to deal with the differences in rates as discriminations between localities by such carrier and, if found undue, to condemn them. In the case of *Kemble* v. *the Lake Shore & Michigan Southern Railway Company,* referred to in the report, the complaint was against carriers making a through line both to Boston and to New York, so that the question presented was that of discrimination by the same line as between the two places, both being served by it. But there is a manifest and radical difference between a matter of discrimination like that by a carrier between places on its line, and which is clearly covered by the provisions of the third section of the Act to regulate commerce and the fixing of differentials in rates to or through the various ports and over independent and competing railroads. In the latter case the law has undertaken to leave the free play of competition to adjust rates, subject only to the requirements made of each carrier that its rates shall be reasonable and just and shall not unduly discriminate between commodities or between persons and localities reached or served by it and that duly established and published rates be observed. The foregoing report proceeds upon the idea that there is some legitimate and ascertainable standard of fairness by which there can be fixed a limited and proper degree of competition and measure of distribution of the traffic between the ports and carriers other than that wrought by competition. The law undertakes to fix no such standard or limitation; nor does it authorize the Commission to do so even for the purpose of putting to rest these questions so long and so often involved in competitive contests between carriers. The futility of the undertaking of the Commission to do so is illustrated in the following admission contained in its conclusions:

"We have endeavored to find some fundamental principle by the application of which this dispute might be laid at rest, but entirely without success. It is said that a fair differential is one which would give to these several ports the traffic to which they are entitled. It is also said that these several ports are entitled to what of this traffic they can obtain under a fair differential."

The findings declare, "there is no testimony in this record which attempts to show the relative cost of handling this traffic," yet the question of a differential in rates is intimately connected with the question of the reasonableness of the rates involved, and cost of service is one factor of too much importance in connection therewith to be ignored. It is not enough to say that equalizing the export rates is but taking into account the carriage from origin to destination and taking from the inland rate as compensation the post-terminal charges from the out-ports, for on this point the findings are no more satisfactory. They say, "it is therefore impossible to find with any degree of confidence what the rates from these ports have been." The higher insurance rates to be compensated are quite as elusive. These it is said "would be in the long run a real disadvantage against these ports, but there is no testimony in this case from which we can place any exact figure upon this disadvantage," but the differentials are to be fixed to the fraction of a cent. The futility of the undertaking is further illustrated in the following declaration found in the opinion:

"There is no just principle which would compel this company against its will to apply at New York the same rate as at Philadelphia, when the cost of rendering that service is distinctly greater. It might, as a matter of competition, see fit to do so, but it could not in justice be compelled to." It is further said: "If, again, it can be properly done these rates should be so adjusted that this competitive traffic will be fairly distributed between the different lines of railway which serve these ports."

Thus it is seen the purpose and effect of the conclusions is to declare what differences in rates the railroads should make to the four ports for the purpose of distributing the business. Whether the carriers see fit to follow the suggestions of the Com-

mission, which they are, of course, in no sense bound to do, or decline to accede to the same will, in my opinion, leave the Commission in an embarrassing attitude. If they refuse we are powerless to enforce the recommendations, yet compromised in any subsequent proceeding against finding other as reasonable rates. If they acquiesce we will have gone beyond our authority to interfere in the course of trade, determining the direction and destination of commerce, a matter with which we are not charged. To-morrow we may be called upon to determine what share the Gulf ports may have, and the Gulf roads may carry; the next day to fix the proportion to which the Pacific coast is entitled.

While the situation justified the inquiry, the facts disclosed do not, in my judgment, justify the conclusions reached for the reason that I believe they do violence to the great principle of competition which the Congress and the Supreme Court have so jealously and consistently nourished as one of the fundamental rights of the public. In declaring as between competing lines and competing ports what differentials shall govern, assuming that they will govern, we hamper competition, and by this regulation of distribution effect in reality a division of territory, a division of traffic and a division of earnings, which in substance and effect tend to defeat not only the purposes of the anti-trust act against the restraint of trade, but the pooling provision of the Interstate Commerce Act, with the enforcement of which the Commission is charged.

In this thirty years' contest over the traffic under consideration there have been truces and arbitrations before this; but when Mr. Fink was chosen it was by the carriers, and when Judge Cooley and his associates, the Advisory Commission, were called in 1882, it was by the carriers. When Judge Cooley was called in 1886 on western differentials it was by the carriers. And these arbitrators did what? They left, as they were doubtless expected and as they were bound to do, conditions as they found them. The carriers by competition and every device in economy human ingenuity could invent had reached in these years of struggle, competition and the natural course of trade, results which were not satisfactory to all of the communities and

to shippers, and to satisfy these, disinterested non-carriers were called in to give a lay opinion and pleading lack of information and substantial justice they approved what they found and the differentials were accordingly left undisturbed while the truce lasted.

May competing carriers lawfully effect through the agency of the Commission restraint of competition and trade by a division of traffic between themselves and the ports when to do the same thing through an agency of their own would be unlawful? I think not.

The expectation of putting these questions to ultimate rest could spring only from a Utopian dream. Their permanent rest is perhaps neither practicable in view of the interests of the ports and carriers nor desirable in the interest of the public.

The unmolested freedom of competition by lawful methods permitting the free course of traffic is more likely to give to each community and carrier the fair and just rewards of its enterprise and public spirit and just rates to the public than any devised plan of fixed differentials between competing carriers to compose conflicting interests by apportionment of the traffic and which in the nature of the case must be more or less arbitrary. It is at least safe to keep within both the spirit and letter of the law.

MEMORANDUM.

Filed June 23, 1905.

Prouty, *Commissioner:*

Soon after the promulgation of the opinion of the Commission in the above investigation a communication was received from the Boston Chamber of Commerce calling attention to the fact that the application of a uniform differential of three-tenths of a cent per bushel upon all kinds of ex-lake grain would result in allowing almost twice as great a differential per hundred pounds upon oats as upon wheat. It was also stated that when-

No. 782.

ST. LOUIS HAY & GRAIN COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY AND V. T. MALOTT, RECEIVER THEREOF; ILLINOIS CENTRAL RAILROAD COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; CHICAGO & ALTON RAILROAD COMPANY; WABASH RAILROAD COMPANY; TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY; AND CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY OF ILLINOIS.

Decided May 15, 1905.

When a carload of hay destined to East St. Louis, Ill., is delivered by the carrier at a warehouse designated by the shipper or consignee prior to arrival in that city, or to the proper switching road, or is placed upon the team track of the carrier, if no specific delivery is named, the car has been properly delivered and the carrier may insist that the consignee shall accept such delivery; and in case the consignee intercepts and sells the carload while upon a hold track, after arrival at East St. Louis but before such delivery, he thereby accepts delivery. If the consignee, instead of removing the hay from the car so delivered, sells it to complainant, and a carrier, upon an order of the original consignee or of complainant, moves the car to complainant's storehouse in East St. Louis, that is a new and independent service on reconsignment performed entirely within the State of Illinois, of which this Commission has no jurisdiction; but it is considered that Congress might, directly or through the Commission, require that shippers shall be allowed a certain time after arrival in East St. Louis to designate the point of delivery for interstate shipments, and that such delivery be made accordingly.

Jas. W. Dye for complainant.

E. S. Robert for C., B. & Q. R. R. Co.

Ed Baxter for I. C. R. R. Co.

S. O. Bayless for C., C., C. & St. L. Ry. Co.

Edward Barton for B. & O. S. W. R. R. Co.

R. M. Shaw for C. & A. R. R. Co.

C. N. Travous for W. R. R. Co.

P. B. Warren for T., St. L. & W. R. R. Co. and C., P. & St. L. Ry. Co.

Thomas E. Ralston for Wiggins Ferry Co.

J. G. Williams for T. H. & I. R. R. Co. and V. T. Mallott, Receiver.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

The St. Louis Hay & Grain Company, the complainant in this case, is a corporation under the laws of the State of Illinois engaged in the purchase and sale of hay with its principal office at St. Louis. In the course of its business it owns and operates two storehouses at East St. Louis known as the Union and National warehouses, which are situated upon the tracks of the Wiggins Ferry Company and the Southern Railway. The complainant purchases hay in the yard in East St. Louis which it takes to these warehouses for the purpose of unloading, sorting and reloading for shipment to various points outside the State of Illinois. The complainant insisted and we find that practically all the hay handled by it through these warehouses finally becomes the subject of interstate transportation by rail.

The Wiggins Ferry Company and the Southern Railway Company each charge the complainant $2.00 for switching a carload of hay to its warehouses. In addition to this the defendant carriers which bring hay from the country into East St. Louis make a charge which they denominate a reconsignment charge of $2.00 per carload for delivering the hay to the Wiggins Ferry Company or the Southern Railway; and it is the imposition of this charge which the complainant attacks. In order to understand the exact conditions under which the charge

is imposed it is necessary to consider the method of handling hay at East St. Louis.

The testimony indicates that, as a rule, hay is shipped into East St. Louis from country points, largely from the State of Illinois, consigned to some commission man. After the arrival of the hay the commission man sells it, and this seems to be invariably done upon an actual inspection of each carload. A portion of this hay is unloaded at East St. Louis for consumption there. Another portion is bought up and sent on to other destinations. That going forward is sometimes sent on without unloading but is ordinarily taken to some warehouse like those of complainant.

The defendant railroads which bring this hay into East St. Louis have without exception what are known as team tracks, where cars are placed for unloading by team, and it is upon these tracks that such of the carloads are received and unloaded as are for consumption in East St. Louis. The defendants also have what are known as hold tracks upon which incoming carloads of freight seem generally to be placed in the first instance before being distributed. If hay is consigned to a particular warehouse at East St. Louis the carrier delivers it to that warehouse, if upon its own track, or to that railroad upon which the warehouse is located without any charge in addition to the regular freight rate. If consigned to a particular individual, that individual may indicate either by general instructions, or by particular order applicable to a single carload, the point of delivery, and this delivery is made for the regular freight rate. If no special delivery has been designated previous to the arrival of the car, it is placed upon the team tracks of the various lines as soon as may be. The testimony showed that almost invariably, in case of most of the defendants, the car was put on the team tracks before notice of its arrival was given, so that the commission merchant when he took his prospective customer to inspect the hay generally found it upon those tracks. To this the Burlington system seemed to be an exception, it being the rule to find carloads in case of that defendant upon its hold tracks. It was also said by several witnesses that it was difficult to induce buyers to inspect carloads of hay unless they were placed upon

the team tracks so that they could be readily found and examined.

If a car is purchased for consumption in East St. Louis it is unloaded upon the team track where it stands when it is bought; but if it is purchased for sale outside East St. Louis it must usually be taken to some warehouse, as already indicated. In that event the commission man to whose consignment the hay was shipped makes reconsignment of the carload and directs the railroad company to deliver it at the desired warehouse or possibly to deliver it to some connecting carrier for shipment in its present condition.

When this is done the car must be taken from the team track and switched either to the warehouse, or to the railroad upon which the warehouse is situated, or to the connecting line which is to carry it on to its destination. A new and distinct service is required if the car has been already placed upon the team track. If, however, the car is still upon the hold tracks of the railway it can ordinarily be sent to the point designated by the reconsignor at substantially the same cost as it could be placed upon the team tracks. It was conceded by the complainant that $2.00 was a reasonable sum to be charged for the service rendered provided any charge was lawful.

The complainant insisted that the defendants made no similar charge for the reconsignment of grain and, therefore, discriminated against hay and other commodities. It appeared that this charge was first imposed January 1, 1903. Previous to that time the consignee might within 48 hours reconsign carloads at East St. Louis, and the carriers would deliver at the destination of the reconsignment without additional charge. The present rule when first put in effect applied to all commodities alike including grain. The State of Illinois has a statute providing that the point of delivery may be changed without expense to the consignee in case of grain, provided the carrier is notified before the car has been unloaded. Application was made to the Railroad and Warehouse Commission of the State of Illinois for relief from this proposed reconsignment charge, and that commission made an order directing that consignees be allowed until five o'clock in the afternoon of the day after

receiving notice of the arrival of carloads of grain in which to designate the destination of such carloads and that delivery should be made at the point designated without the payment of the reconsigning charge. It would seem from the testimony that this order has been observed by some of the defendants and ignored by others. It will be noticed that the order applied only to grain. All the defendants have exacted the reconsignment charge upon all other commodities.

The complainant introduced evidence tending to show that the Burlington System had made delivery to the Wiggins Ferry Company at East St. Louis for transfer to the Mound City warehouse at St. Louis of reconsigned cars without requiring payment of the re-consignment charge. The introduction of this testimony was opposed by the railroads because no such issue was raised by the complaint. Thereupon the complainant asked that it might be allowed to amend its petition. This motion was taken under advisement and the testimony received.

In the view taken of the case by the Commission that fact, if established, would be immaterial and the right to amend has, therefore, been denied.

The complainant insisted that the defendants, by their rules and regulations, should allow 5 days free time for the unloading of hay at East St. Louis, whereas in fact but 48 hours are allowed. It would seem that formerly the free time was as claimed by complainant, but that since 1899 the car service rules have allowed but 48 hours, from 7 o'clock in the morning, after the car was placed for unloading. This appeared from the printed rules and the testimony showed that such rule has been uniformly enforced. The complainant also alleged in its complaint that the charge of $1.00 per day was unreasonable, but this was not insisted upon on the trial. It is the usual charge and would not be disapproved by the Commission without careful consideration.

Conclusions.

If a carload of hay is consigned to a particular warehouse in East St. Louis, the carrier delivers it at the warehouse, if upon its tracks, or to the proper switching road if not. If the

consignee, before the arrival of the car at East St. Louis, gives directions for its delivery at a particular warehouse, or to a particular railroad, this delivery is made. If no point of delivery is named in the consignment, and no directions have been given before the arrival of the car in East St. Louis, the carrier places it upon its team track. Now, when the car has been disposed of in the above manner, we think the service of the railway in respect of that shipment is complete. The car has been properly placed for the delivery of its contents and the carrier may insist that the consignee shall accept delivery at that point. If the consignee of that hay, instead of removing it from the car himself, sells it to this complainant, and the railroad company, either upon the order of the original consignee or of this complainant, moves that car to the storehouse of complainant in East St. Louis, that is a new and independent service, performed entirely within the State, over which this Commission has no jurisdiction.

If, as sometimes, though not ordinarily happens, the car has not been placed for delivery before it is purchased by complainant, the railroad has not completed its contract of transportation. But it is evident that if a distinction were made in imposing these reconsignment charges between cars actually upon the hold tracks when consigned and those upon the team tracks, this would lead to endless disputes and furnish a ready means of discrimination. We think, therefore, that the carriers have the right to insist that when once a car has reached East St. Louis and is on its way to a particular destination it shall be delivered at that destination, and that if the consignee for his own convenience intercepts the car before it is placed for final delivery this does not alter the rights of the parties. He may insist upon having his car placed promptly upon the team track where it can be examined and sold, but if he sees fit to accept and sell his car upon the hold track he thereby accepts a delivery there.

Transportation by rail undoubtedly involves a suitable delivery. Discrimination may arise in the delivery as well as in the receipt or the transportation. Authority over the transportation must carry with it authority over the delivery. It

is probable that the Congress of the United States might, either directly or through a commission, provide with respect to hay, just as the Illinois Commission has attempted to provide with respect to grain, that shippers shall be allowed a certain length of time after the arrival of the car at East St. Louis in which to designate the point of delivery, and that such delivery shall be made accordingly, somewhat as Congress has already done in respect of the car itself in the Safety Appliance Act. It may be that the railroads could, without disproportionate inconvenience, allow that privilege, and that they ought to allow it ; but Congress has not interfered and this Commission has no power to make such a regulation. In the absence of one we think that the defendants may deliver this hay in the ordinary way, and that after having made one delivery any subsequent service is distinct from the original contract of carriage.

The complainant insists that inasmuch as this hay is finally sent to points without the State it is to be regarded from the moment it is ordered to complainant's warehouse, as in process of interstate transportation. While this may be so in one sense, and while without doubt it is often true that commodities temporarily stored are to be regarded as in transit, we hardly think that can be said in this case. This hay is shipped to East St. Louis as its final destination. Much of it is actually consumed there. When the complainant purchases it and takes possession of it the contract of transportation under which it started is at an end. The mere fact that complainant may intend to send it on to some interstate point could hardly make the service of switching that carload to its warehouse an act of interstate transportation within the provisions of the Act to regulate commerce. If the complainant is fairly entitled to this reconsignment privilege without additional compensation it must obtain it by application to the State of Illinois, in case of state shipments, and to the Congress of the United States in case of interstate.

The testimony of the complainant showed that in three instances the Chicago, Burlington & Quincy Railroad Company had re-consigned hay, arriving at East St. Louis, to a warehouse located upon the west bank of the Mississippi River with-

out exacting the reconsignment charge of $2.00 per car. The officials of that line denied all knowledge of these transactions, stated that it was the intention of that company to uniformly impose the charge, and that if not imposed in this instance it must have been the result of an oversight. We see no reason to doubt the truthfulness of this statement, and that being so, we do not think that the fact of accidentally failing to impose this charge in these three instances could in any wise affect the disposition of the matter before us. These shipments were reconsigned to an interstate point, and if it were shown that the Burlington Road intentionally practiced discriminations of this kind it might amount to a violation of law which would at least require proceedings of a criminal nature, if it did not entitle the complainant to an action for damages as it probably would.

No substantial question is presented by that branch of the complaint relating to demurrage charges. It appears that these charges are the same as those usually imposed elsewhere, and that they are assessed against all persons alike according to the rules now in force. While we make no finding in favor of the reasonableness of either the amount or the free time, we certainly could not predicate a finding of unreasonableness upon any testimony in this case.

The complaint is dismissed.

No. 757.

ST. LOUIS HAY & GRAIN COMPANY

v.

MOBILE & OHIO RAILROAD COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; LOUISVILLE & NASHVILLE RAILROAD COMPANY; AND SOUTHERN RAILWAY COMPANY.

Decided May 15, 1905.

1. Stopping a commodity in transit for treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of the law, cannot demand as a matter of lawful right; but carriers may not unjustly discriminate between markets or individuals in the granting of such privileges.
2. In allowing the privilege of reconsigning hay at East St. Louis to southern destinations, defendants are entitled to charge for such privilege what it actually costs them; and the fair average cost to the carrier when complainant or others handle the hay through warehouses at East St. Louis, over and above the cost of handling in East St. Louis a through shipment via East St. Louis to southern destinations, is $2 to $2.50 per car, or approximately 1 cent per 100 lbs. Shipments routed through East St. Louis are carried from that point to southern destinations at a proportional rate, which is 2 cents per 100 lbs. above the rate from Ohio River crossings to the same destinations. Hay reconsigned to such points from warehouses in East St. Louis is charged 4 cents per 100 lbs. above the Ohio River rate. Hay appears to be reconsigned from warehouses at Ohio River points, and at Nashville and Memphis, to southern points without additional charge.

Held, upon all the facts, that defendants' rates on reconsignments of hay from warehouses in East St. Louis to points south of the Ohio River, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable, and that complainant is entitled to reparation.

Jas. W. Dye for complainant.

Ed Baxter for M. & O. R. R. Co., I. C. R. R. Co. and L. & N. R. R. Co.

Ed Baxter, E. C. Kramer and *C. B. Northrup* for So. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The defendants in this proceeding are the Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisville & Nashville Railroad Company, and the Southern Railway Company. They all operate lines of railroad leading from East St. Louis, Illinois, to points south of the Ohio River and east of the Mississippi, and all engage in the transportation of various commodities from that point to the territory above defined. The defendants all have in effect what they term proportional rates on hay which is received at East St. Louis by them from their connections. These proportional rates to southeastern points are two cents above the rate from the Ohio River when the shipment is made directly through East St. Louis, but if the hay is "reconsigned" at East St. Louis the charge is 4 cents above the Ohio River rate. It is the imposition of this additional two cents for the privilege of reconsigning to which the complainant takes exception.

Large quantities of hay produced in territory east, north and west of East St. Louis are consumed in southeastern territory. This hay can and frequently does reach its destination through some other gateway than East St. Louis, but much of it can be and is carried through that gateway. Of the defendant lines, the Illinois Central reaches north of East St. Louis, but the other three lines terminate there. The lines of railway bringing this hay from the point of origin also terminate as a rule at East St. Louis. For the purpose of establishing a basis of through rates upon which business may be transacted and by which it will be attracted to the lines of the defendants at East St. Louis, these proportional rates have been put into effect.

The tariffs of some of, if not all, the defendants contemplate the application of this proportional rate only to shipments which

are in fact through billed from the point of origin to destination. If this rule were strictly applied, hay shipped locally to East St. Louis and afterwards sent on, even though not unloaded, should pay a rate of 4 cents above that from the Ohio River. This, however, is not the practical interpretation which the carriers themselves have put upon these tariffs. In point of fact, if a carload of hay is consigned to East St. Louis locally upon the local rate, and the consignee of that carload determines upon its arrival in East St. Louis to send it directly forward, he may do so by paying to the line which brings it into St. Louis what is called a reconsigning charge of $2 per car. This line upon receiving directions from the consignee will deliver the car to the proper southern line, which receives it and carries it on as a through shipment. The southern lines actually know that carloads of hay received by them at the so-called through proportional rate have been shipped into St. Louis upon the local rate. In other words, they do not inquire, and make no distinction between hay which has been billed from the point of origin to some point south of the Ohio River and hay which has been billed locally into St. Louis and reconsigned at St. Louis without being removed from the car. If, however, the hay is unloaded by the owner at St. Louis, a rate 4 cents above the Ohio River rate is always imposed.

East St. Louis is an important hay market, to which large quantities of hay are shipped for sale. This hay is usually consigned to commission merchants who sell it upon inspection in the car in which it arrives. The purchaser frequently unloads it at East St. Louis for consumption there. He sometimes ships it forward in the original car to a southeastern point. More often when intended for southeastern territory it is taken to a warehouse and unloaded for the purpose of grading, assorting and reloading.

The complainant is a corporation under the laws of the State of Illinois with its principal office at St. Louis, Mo., engaged in the business of handling hay, in course of which it operates two warehouses at East St. Louis. While the complainant buys to some extent from the producer in the country, its principal business seems to be the purchasing of hay on the track from com-

mission men at East St. Louis, which it sends for the most part into this southeastern territory. It may occasionally send forward a car without unloading; most of its hay is taken to its warehouses, there unloaded, inspected, assorted, and reloaded for the southern markets. It will be seen, therefore, that the practical effect of this reconsigning rule is to permit the track buyer at East St. Louis, who sends the carload which he purchases directly through without unloading, to do so at a rate two cents better than that paid by the complainant, who puts his hay into the warehouse. The evidence fairly shows that the privilege of unloading is of value to the complainant, but how valuable did not appear.

The defendants justify the imposition of this higher charge where the hay is taken to a warehouse and unloaded, as in the case of the complainant, by the additional cost which that mode of handling entails. The complainant insists that the cost of the service to the carrier is no greater in that case than in the other and that, therefore, the imposition of this charge is unreasonable. The important question of fact would seem to be, does this additional service impose an additional burden upon the carriers, and, if so, what is the fair amount of the increased expense?

Anything like an exact determination of this is rendered impossible by the complicated conditions at East St. Louis. Mr. Snell, the representative of the Wiggins Ferry Company, testified that as a rule northern lines had no physical connection with southern lines, so that, ordinarily, cars must be switched by some belt line, of which there seem to be several, in making the connection. Some lines from the South make more physical connections than others, and the Southern Railway appears to own one of the belt lines through which it forms a connection with every railroad entering East St. Louis from the North. The warehouses at which hay is handled are situated sometimes upon one line of railway and sometimes upon another. It is evident, therefore, that the cost to a particular railroad of permitting this unloading of hay at East St. Louis would vary with the line by which the hay arrived from the North and with the location of the warehouse at which the hay was handled. Every line must,

however, put itself upon an equality with its competitor and t fact that some particular line is obliged to make an absorpti in the case of reconsigned business which it does not make case of through business is no reason why that absorption shou be counted as a part of the expense of reconsignment in gener The attempt should be rather to arrive at a fair estimate of t average cost.

Perhaps this can be best done by taking the warehouse of th complainant as an example. This warehouse is located up the tracks of the Southern Railway and also upon those of t Wiggins Ferry Company, one of the belt lines which make co nection, as we understand it, between all incoming and outgoi railroads.

The Southern Railway, as already stated, makes connectic with all northern lines, and therefore a carload of hay arrivi by any road from the North or West might reach the storehou of the complainant in two ways; namely, via the Southern Rai way and via the Wiggins Ferry lines. Let us assume, firs that it is sent there by the Wiggins Ferry route.

The cost to the in-road of delivering this carload may be a sumed to be the same whether it is turned over to the Wiggi Ferry Company to be sent to the storehouse of the complainan or to be switched to some connecting line for through shipmen There is, therefore, up to the point of its receipt by the Wiggi Ferry Company no difference of expense between the two tran actions. The Wiggins Ferry Company switches the car to t storehouse of the complainant and takes out the empty, as w understand the testimony, for a charge of $2.00 per car. Whe now, this hay goes to the South the Southern Railway sets in a empty car at the storehouse of the complainant and takes out t loaded car. It may be fairly assumed that the service of taki out the loaded car and placing it in the train of the Southern f transportation south entails on the average, the same expense would be entailed in taking the through car from the northe connection and placing that in its train. The difference service performed by the southern road in the two cases consis therefore, in setting an empty car at the storehouse of the co

plainant. This service in our opinion is fairly worth from 40 to 60 cents.

When this complaint was filed, the complainant, in a transaction like that above detailed, paid the charge of the Wiggins Ferry Company, which was then $1.50. Since the first hearing of this case that charge has been increased to $2.00, and is now absorbed, owing to certain competitive conditions, by the line carrying the traffic south, in this instance the Southern Railway.

Let us assume, now, that the carload of hay, instead of being delivered to the Wiggins Ferry Company is delivered directly to the Southern Railway. That company takes the car and places it in its southbound train in case of through shipment, but switches it to the warehouse of the complainant if it is to be unloaded. The same service in taking the car out from the warehouse must be performed as before. We may assume, again, that the cost to the Southern of placing the car in its train is the same when received from the northern road as when taken from the storehouse of the complainant, so that the additional expense to the Southern line is the switching of the loaded car to the storehouse of the complainant, the moving of the empty car back to the northern line, and the moving of the empty car for its southbound load to the storehouse. The testimony fairly shows that the cost of switching the loaded car to the storehouse and taking the empty out would not exceed $2.00. Inasmuch as the complainant company can in any case obtain that service for $2.00, and inasmuch as the Southern Railway itself would only be compelled in that event to absorb $2.00, it would be unfair, certainly, to charge the complainant more.

It would seem, therefore, that in case of the complainant's warehouse when shipment south is made via the Southern road the additional cost to the Southern would not exceed about $2.50. This does not include the additional time which the car is in service, and which will be referred to later.

Let us assume, now, that the shipment south is made not by the Southern, but by the Louisville & Nashville, and that it arrives by the Wabash, which has no physical connection with the Louisville & Nashville. If the carload of hay is delivered directly to the Louisville & Nashville it must be done by the Wig-

gins Ferry Company, or by some other belt line, for which the charge would be $2.00, which the Louisville & Nashville absorbs. If it goes to the complainant's warehouse, it is delivered to the Wiggins Ferry Company, and switched to the warehouse at an expense of $2.00. The service, therefore, of the Wabash Railroad and the Wiggins Ferry Company is exactly the same whether the car is delivered for through shipment or taken to the complainant's storehouse.

When, now, the car is sent forward application is made to the Louisville & Nashville for an empty, which is delivered to the Wiggins Ferry Company. That company now takes the empty to the storehouse and the loaded car from the storehouse, delivering the latter to the Louisville & Nashville. The cost to the Louisville & Nashville of putting that loaded car into its train is exactly the same whether it is received from the Wiggins Ferry Company as a through shipment or whether it is received as a reconsigned shipment; but in the latter case there is the additional expense of moving an empty car to the Wiggins Ferry Company. At the present time the Louisville & Nashville absorbs both the switching service to and the switching service from the storehouse of the complainant, and therefore it pays by way of absorption $4.00 in case of the reconsigned shipment, while it pays but $2.00 in case of the through shipment. That is, the additional expense to that road is $2.00 plus the expense of switching its empty car to the Wiggins Ferry connection, or, as in case of shipment out by the Southern, approximately $2.50 per car.

The Louisville & Nashville makes direct connection with several northern lines, and if the hay had reached St. Louis over one of these lines there would have been no switching charge involved in case of the through shipment, so that the additional switching charges absorbed would be $4.00 in case of the reconsignment as against nothing in case of the through shipment. But we have already seen that as a rule southern lines do not possess these physical connections. The Louisville & Nashville absorbs $4.00 instead of $2.00, because the complainant's warehouse being upon the Southern road it can ship its hay to any southeastern point via that line without payment of the switch-

ing charge. It is immaterial to it whether it makes shipment by the Southern or the Louisville & Nashville. It ought not, therefore, to be charged with this expense if the Louisville & Nashville sees fit to incur it in order to obtain its business.

If, instead of considering the warehouse of the defendant, we were to select one situated upon some inbound line instead of an outbound line the result would be apparently the same. Presumably the in-line can make delivery at the warehouse as cheaply as to the connecting carrier. When the car is switched out, the in-line must obtain an empty car from its southern connection, transport that car to the warehouse and the loaded car back, the cost of which would not be over $2.00. This charge would ordinarily be assumed by the southern line in case of the reconsigned shipment. Here, again, therefore, the out-line would be to the same additional expense of $2.00 per car plus the cost of delivering the empty car by the south-bound line to the northern line for its load.

While circumstances may be easily imagined where particular lines incur a greater added expense than that above indicated, it is believed that this fairly states the situation with respect to the shortest and cheapest route through East St. Louis in the great majority of cases, if not in all cases, and that $2.50 per car fully covers the expense so far as these elements are concerned. It was said in testimony that these figures allowed nothing for maintenance of track, etc. The charge for switching at East St. Louis had been, until October 1, 1904, $1.50 per car, and that included the entire expense to the switching lines, including the cost of their tracks and the maintenance. We apprehend that the figures above given would be a liberal estimate for the service covered, including all items of expense which can be properly charged against it. Substantially the same tracks are required in case of the through car which are needed in case of the reconsigned car. There is, however, one element which has not been taken into account in determining this additional expense, and that is the use of the car itself.

The testimony tends to show that the car is actually in service from two to three days longer in case of reconsigned carloads than in case of through shipments. The complainant denies

this and introduces testimony tending to show that cars are promptly loaded at its warehouse, the time consumed being not ordinarily in excess of six to eight hours. It urges that if there is delay it is not with it, but upon the lines of carriers, for which it is not responsible and ought not to be chargeable. It does seem to us that the outside figures given by the defendants are probably too high, but the delay in moving cars in yards more or less congested like those at East St. Louis is necessarily considerable and we think it fairly appears that an additional time of two to three days is required, and that the defendants are fairly entitled to compensation for the use of the car for this period. We do not agree, however, with the estimate put by the witnesses of the defendants upon the value of this service. Two of these witnesses estimate that a freight car is worth $1.50 per day. In our opinion there is no warrant for any such claim. The Commission has of late investigated the subject of private cars. It is claimed and generally believed that the returns to the owners of these cars are altogether excessive, yet that testimony disclosed the fact that the earnings from a stock car did not exceed from $6.00 to $8.00 per month; that the earnings from a refrigerator car under the most favorable circumstances did not exceed from $12.00 to $18.00 per month. The demurrage charge is only $1.00 a day, and that is imposed not on the basis of a fair *quantum meruit,* but as a penalty to secure the prompt release of the car. The carriers themselves have agreed on 20 cents a day as the per diem charge which should be made, and we think that is enough when, as in this case, the car is not actually moving but standing still practically all the time. In our opinion an additional allowance of 60 cents may properly be made on this account.

To offset this additional burden in case of reconsigned shipments are certain advantages. While it frequently happens that carloads of hay are sent through to destination in the same cars in which they reach East St. Louis, we think the rule is probably otherwise. In times of car shortage, northern lines insist that the hay shall be transferred at East St. Louis from their cars to the cars of southern lines. While the testimony in this case does not show definitely the extent to which that is

done, it fairly appears that it is done in many cases. The cost of the transfer is in the vicinity of $1.25 per car. It must also require in the placing of the cars and the making of the transfer one and probably on the average two days. Here is, therefore, a saving in case of reconsigned hay to the carriers of approximately $1.50 per car whenever the transfer must otherwise be made by them. In addition to that, the testimony shows that when cars are loaded at the warehouse they can always be loaded to their maximum capacity, whereas it often happens that otherwise the load is less than it might be. This difference would often amount to 1,000 or 2,000 pounds, and this again is an advantage in favor of the reconsigned hay.

It should be still further noted that cars from the North after being unloaded at the warehouse of the complainant are frequently reloaded for the South, thus avoiding the expense of placing an empty by the southern line and subtracting, perhaps, a day from the additional time of the car service. The exact extent to which this is done did not appear. When cars were plentiful northern lines would not probably object if their cars went south, but would in case of car shortage. The same conditions which would permit the sending of the same car through to a southern destination would ordinarily lead to the loading of that car for the South at the warehouse of the complainant.

While the question is perplexing and while we may not have apprehended all the material points involved, we are strongly of the opinion and find that, taking everything into account, the average additional expense to southern lines in case of reconsigned hay will not exceed that of direct through shipments by more than from $2.00 to 2.50 per car, which is equivalent upon the average loading of hay to about one cent per hundred pounds.

Much of the hay which actually passes through East St. Louis might reach its southern destination via other gateways. Hay grown in different sections also competes via these other gateways in the South with that which does or might pass through East St. Louis. These gateways are Cincinnati, Louisville, Evansville, Cairo, Memphis, Nashville, and perhaps others. The testimony showed that at all these points hay could be stopped off, unloaded, and treated as the complainant handles

its at East St. Louis without the imposition of any charge in addition to the through rate. The witnesses said that this could be done as a matter of course at the Ohio River, since the through rate was equivalent to the local rates in and out. No such reason was said to exist at Nashville or Memphis. The testimony showed that these markets all competed with East St. Louis, but the force of that competition did not appear.

The complainant claimed to recover as reparation whatever amounts it had paid the various defendants for this reconsignment privilege between May 1, 1904, and February 1, 1905, and counsel for the defendants made no objection to the complainant's recovering for that entire period if entitled to recover at all. A detailed statement was introduced by the complainant, showing its shipments over the lines of each defendant for the above named period and the amounts in the aggregate at 2 cents per hundred pounds. The arrangement was that the defendants were to check over these shipments, and if found incorrect to notify the Commission in order that further investigation might be made. No notice having been received from them, we assume that the amounts given by the complainant are correct. These are against the several defendants as follows:

Southern Railway	$3,144.17
Mobile & Ohio Railroad	1,385.76
Louisville & Nashville Railroad	746.74
Illinois Central Railroad	179.90

We find that the complainant has actually paid to these several defendants the above sums at the rate of 2 cents per hundred pounds on reconsigned shipments.

The complainant further presented a claim for $107.64 against Illinois Central Railroad Company and accompanied that with a bundle of expense bills and a mass of correspondence which had passed between it and that company. The local rate from East St. Louis on hay to the Ohio River is 5 cents per hundred pounds. The shipments involved in this last claim were billed by the Illinois Central Company at the local rate, while the complainant insists that they ought to have been at the reconsigned rate. In case of all the other shipments it was con-

ceded that they were entitled to the reconsigned rate, the only question being as to the propriety or reasonableness of that rate. The question raised as to these shipments is whether they are entitled to any proportional rate at all or whether they should pay the local rate. There is no testimony in this record from which that question can be determined. We have not, therefore, attempted to find any fact with respect to that claim of the complainant.

No reconsignment charge is made at East St. Louis in case of grain and the complainant insisted that this worked an undue discrimination against hay. We find, however, that grain rates at East St. Louis are forced by competitive conditions at other points and that the failure to impose a reconsignment charge upon that commodity in no way prejudices the complainant in the handling of hay.

Conclusions.

It is well understood that a through rate may properly be less than the sum of the locals to or from a divisional point. The mere fact, therefore, that these defendants make in connection with northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved.

The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of special privilege which the carrier may concede, but which the shipper cannot, in the present state of the law, demand as a matter of lawful right. *Diamond Mills* v. *Boston & M. R. Co.,* 9 I. C. C. Rep. 311. Carriers may not, however, discriminate between markets nor between individuals in the granting of such privileges. If this right is given to the markets which compete with East St. Louis in this business by these defendants it should, *prima facie,* also be granted to that market. If these defendants allow this privilege to the competitors of the complainant at East St. Louis they should accord it the same privilege.

The case shows, although not very clearly, that the defendants concede this privilege at other competing markets, and that

a track buyer in East St. Louis itself can send along a carload, which he purchases but does not unload, without the payment of this charge. It further shows, however, that the right to unload this hay and handle it at its warehouse is of value to the complainant, and that it costs these defendants something to accord that privilege. Under these circumstances, we think it is not an undue preference against this complainant if the railroads charge for the privilege what it actually costs them, but we do not think that they should charge more than the actual cost. The case finds that the fair average cost when the complainant handles its hay through its warehouse over and above the cost of a through shipment is from $2.00 to $2.50 per car, or approximately one cent per hundred pounds. We think, therefore, that this reconsignment charge ought not to exceed the proportional rate by more than one cent, and that the complainant is entitled to recover whatever it has paid in addition to that sum.

In deciding this case we have given to these schedules the practical interpretation which the defendants themselves have put upon them. It is very doubtful whether a strict construction of these various proportional tariffs would permit the southern lines to receive hay at the two-cent rate in any case where it was not billed through to final destination from the point of origin. But it would be so manifest a discrimination against this market to deny the right of reconsignment when that right could be accorded without additional expense, and when it is in fact accorded at every corresponding market, that we can hardly assume this to be the intention of the defendants. When an additional expense is incurred by switching the hay into and out of a warehouse there arises a legitimate reason for imposing a charge for that privilege.

The testimony tends to show, as already stated, that at other markets this additional service is performed without compensation, but that particular feature of the case is not set forth in the complaint and was only brought out upon the final hearing. It is conceivable that upon a full development of that phase of the matter we might reach the conclusion that the imposition of any reconsigning charge was an undue discrimination against East St. Louis, but our present impression is from what appeared as

to conditions at these other markets that the defendants may properly charge for the actual additional expense.

The defendants should be ordered to cease and desist from imposing the present reconsignment charge of 4 cents per hundred pounds, and the respective defendants should be directed to repay to the complainant one-half of the sums stated in the findings of fact to have been paid by the complainant to the various defendants.

No. 736.

THE CAPITAL CITY GAS COMPANY

v.

THE CENTRAL VERMONT RAILWAY COMPANY AND THE RUTLAND RAILROAD COMPANY.

Decided June 1, 1905.

1. The phrase "under substantially similar circumstances and conditions" in section 2 of the Act to regulate commerce refers to the matter of carriage, and it is not permissible under that section for two or more carriers to establish a joint through rate, less than the sum of their locals, which is applicable only to a particular shipper or class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination. *Wight* v. *United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822, as explained and confirmed in *Interstate Commerce Commission* v. *Alabama Midland R. Co.* 168 U. S. 144, 166, 42 L. ed. 414, 423, 18 Sup. Ct. Rep. 45, applied.
2. Defendants' joint rate of 90 cents per ton on bituminous coal from Norwood, N. Y., to Montpelier, Vt., when intended for "railroad supply" and their combination rate of $1.85 per ton, applied on such coal carried between the same points and used for manufacturing or any other industrial or domestic use, constitutes unlawful discrimination.

Edward H. Deavitt for complainant.
C. W. Witters for Central Vermont Ry. Co.
H. H. Powers for Rutland R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman:*

The complaint alleges unlawful discrimination in rates on bituminous coal, and the facts are found as follows:

The complainant is a corporation organized under the laws of

Vermont for the purpose, among other things, of manufacturing and selling gas in the city of Montpelier in that State. The bituminous coal used in its business is procured in Pennsylvania and brought by rail to Montpelier, the price paid by complainant on delivery including the cost of the coal at the mines and the transportation charges.

The defendants are severally common carriers by railroad between points in different states, and particularly from Norwood in the State of New York to Montpelier aforesaid, and as such are subject to the Act to regulate commerce.

By joint through tariff, effective June 11, 1903, and now in force, the defendants have established a through rate of 90 cents per gross ton on bituminous coal, carloads, from Norwood, N. Y., to Montpelier, Vt., when intended for "railroad supply," that is, for the uses of a connecting carrier at Montpelier, known as the Montpelier & Wells River Railroad Company. There is no joint through rate over defendants' lines from Norwood to Montpelier on bituminous coal for commercial purposes, that is, for the manufacturing uses of complainant or for any other industrial or domestic purpose. On all bituminous coal transported between the points mentioned, except for "railroad supply" as aforesaid, the defendants exact a combination rate of $1.85 per gross ton, carloads, based on the proportional rate of the Rutland Railroad Company from Norwood to Alburgh, Vt., a distance of 97 miles, of 60 cents per gross ton, plus the local rate of the Central Vermont Railway Company from Alburgh to Montpelier, a distance of 73 miles, of $1.25 per gross ton. The difference between the 90-cent rate allowed to the Montpelier & Wells River Railroad Company and the $1.85 rate charged all other shippers of bituminous coal to Montpelier constitutes the discrimination of which complaint is made.

When bituminous coal is carried by defendants from Norwood to Montpelier the service is performed under substantially similar circumstances and conditions whether transported for a connecting railroad or for complainant and other consumers.

It is not charged and no attempt was made to prove that the $1.85 rate is *per se* unreasonable, except by comparison with the lower rate accorded by defendants to another carrier; nor did

defendants offer any explanation or show any reason for such lower rate. There are no competitive relations between complainant and the Montpelier & Wells River Railroad Company, and it does not appear that the difference in rates above stated operates in any direct way or to any measurable extent to complainant's disadvantage.

There are other routes by which the coal in question may be transported to Montpelier, the principal one apparently being via Rotterdam Junction and Burlington. The coal used by complainant comes mainly, if not altogether, by the latter route. In point of fact, as we understand, there has been but one shipment of coal to complainant via Norwood and the defendants' lines. The rates appear to be the same by both routes.

Conclusions.

We are constrained to hold that these facts, which are wholly undisputed, establish a discrimination forbidden by the second section of the Act. In transporting bituminous coal from Norwood to Montpelier at 90 cents a ton for "railroad supply" the same service is performed and the circumstances and conditions of carriage are the same in every material respect as in transporting coal at $1.85 per ton for complainant and other consignees. This appears to be conceded since no proof was offered that the fact is otherwise. It follows, as we think, that the difference in rates is a violation of the statute.

Wight v. *United States,* 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822; *Interstate Commerce Commission* v. *Alabama Midland R. Co.* 168 U. S. 144, 166, 42 L. ed. 414, 423, 18 Sup. Ct. Rep. 45.

In the former case it was held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and the decision therein rendered, as explained and confirmed in the subsequent case, condemns as unlawful the discriminating charges here considered. It is not permissible under this section for two or more carriers to establish a joint through rate, less than the sum of their locals, which is available only to a particular shipper or

class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination. In such case it may be said that the law presumes a common injury to those compelled to pay the higher rate because of the concession to the interest favored. If these defendants obtain only reasonable returns from their entire coal traffic, it may well be claimed that the rates charged complainant and other Montpelier consumers are higher than they would be but for the much lower rates allowed on coal for "railroad supply."

Moreover, if this view is correct, the absence of actual prejudice to complainant would not excuse the defendants. The most salutary law may doubtless be disregarded in some cases without injury and inflict a degree of hardship in other cases by its enforcement. Whatever may be said in that regard in the present instance, we are convinced, upon the authority of the decisions above cited, that the regulating statute does not permit the discrimination shown in this case and our ruling must so declare.

We do not pass upon the reasonableness of the $1.85 rate. It is certainly liberal and perhaps excessive, but that question is not now presented. The only point decided is the unlawfulness of the discrimination. An order will be entered accordingly.

No. 637.

THE CHARLOTTE SHIPPERS' ASSOCIATION

v.

THE SOUTHERN RAILWAY COMPANY; THE SEABOARD AIR LINE RAILWAY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE NORFOLK & WESTERN RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE CLYDE STEAMSHIP COMPANY; THE OLD DOMINION STEAMSHIP COMPANY; THE MERCHANTS & MINERS TRANSPORTATION COMPANY, AND THE BALTIMORE STEAM PACKET COMPANY.

No. 638.

SAME

v.

THE SEABOARD AIR LINE RAILWAY; THE SOUTHERN RAILWAY COMPANY; THE NORFOLK & WESTERN RAILWAY COMPANY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; THE ATLANTIC COAST LINE RAIL-

ROAD COMPANY; THE CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY; THE LOUISVILLE & NASHVILLE RAILROAD COMPANY; THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; THE WESTERN & ATLANTIC RAILROAD COMPANY; THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, AND THE MOBILE & OHIO RAILROAD COMPANY.

Decided June 22, 1905.

Freight rates to Charlotte, N. C., from New York and other northern and eastern points, and from Louisville, Chicago, and other western points, are complained of as unjust, and those from the west as greater for the shorter distance to Charlotte than for longer distances through Charlotte to more distant localities. The freight rates to Charlotte are made by combining rates to Lynchburg and other Virginia cities with the local rates from those cities to Charlotte. Competition forces low rates to the Virginia cities, and also compels the low rates in force from the west to certain points east of Charlotte. If through rates to Charlotte lower than the combination of charges to and from the Virginia cities were established, the disadvantage now resulting to Charlotte dealers in their competition with dealers at Virginia cities would to that extent be removed, and the carriers are recommended to consider taking such action, but in the absence of a showing that the present through charges are unreasonable the Commission is without authority to require discontinuance of the charges now exacted. *Held:* After citing decisions of the courts, that the facts presented do not constitute a basis for an order of relief which could be enforced, and therefore the complaints must be dismissed.

T. C. Guthrie, C. H. Dulls and *C. W. Tillett* for complainant.
Ed. Baxter for defendants.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

These two proceedings were simultaneously brought by the Shippers' Association of Charlotte, North Carolina, a society of

merchants, dealers and shippers, and were designated for convenience the "East" and "West" cases. They involve the same questions in the system of making rates into what is known as the Carolina territory, and are so intimately related in the matter of methods and results that it was found best to hear them together and they will be now considered and disposed of as one case.

In what was designated the East case the complaint alleges that the defendants named are common carriers to and from the territory named and certain states north and east thereof and subject to the Interstate Commerce Act; sets forth the distances to various points in Virginia and North Carolina from New York and other eastern cities; recites the rates upon classified freight and certain commodities from said eastern cities to so-called Virginia gateways, Richmond, Norfolk and Lynchburg, and North Carolina cities by rail and sea-and-rail.

The complaint further alleges that the rates are unjust in themselves, and subject complainant to unjust discrimination, giving undue and unreasonable preference and advantage to like dealers and merchants in Norfolk, Richmond, Lynchburg, Danville and Wilmington, enabling the latter to exercise a controlling and illegal advantage over Charlotte merchants and dealers in the distribution of products from said eastern cities to the Carolinas.

In the so-called West case like complaint is made of discrimination in rates from Chicago and other western points in the comparative rates to Charlotte and the said Virginia gateways and not only is unjust discrimination and undue prejudice alleged but a violation of the fourth section in the charging of a higher rate to Charlotte than to more distant points on like traffic passing through Charlotte over the same line.

The defendants' answers point out certain errors in distances and rates named in complaint and otherwise admit the rates, distances, systems and methods of handling stated in complaint, but defend the same on the grounds of alleged inability to change rates, and on differences in circumstances and conditions.

Defendants deny unjust discrimination against Charlotte and aver that the rates to Charlotte are based on the same system as

to other points in contiguous territory, and finally deny any violation of the Act.

The hearings were long and the testimony voluminous from which with the records and exhibits the following facts are found.

The so-called Carolina territory in which Charlotte is situated and the system of rates into which is the principal subject of complaint, though somewhat indefinite and subject to change, was stated by a railroad official on the stand to include at present points on and north of a line drawn from Wilmington, North Carolina, through Columbia, Belton, Anderson, Seneca, Walhalla, including Abbeville, South Carolina; thence by air line from Walhalla to Murphy, including Murphy, thence by air line to Paint Rock, North Carolina, by air line just west of Wilkesboro, North Carolina, to a point south of Roanoke, Virginia, including terminal points of Wilkesboro, North Carolina, Mount Airy, North Carolina, Stuart, Virginia, Rock Mount, Virginia, thence south of a line of the Norfolk and Western Railway from a point just south of Roanoke to a point just south of Norfolk and Portsmouth, Virginia, the eastern boundary line being the Atlantic Ocean from Portsmouth to Wilmington.

To this section rates from Cairo and Evansville are higher than from Louisville. Into another portion of associated territory of Virginia and Carolinas south of the line from Wilmington through Columbia to Walhalla rates from Cairo and Evansville are the same as from Louisville.

The same authority defines the Associated Railways of Virginias and Carolinas territory as including part of the Carolinas and a certain section south of a line from Portsmouth, Virginia, through Pinners Point, Richmond, Lynchburg, Roanoke to Paint Rock; east of a line from Paint Rock to Atlanta, thence north of the Georgia Railroad to Augusta, thence northeast of the Central of Georgia via Millen to Savannah including Athens, Elberton, Atlanta, Charleston, Augusta, Savannah, Yemassee, stations on the Charleston & Savannah Railway (now Atlantic Coast Line) Port Royal or Beaufort.

The territory of the Southern Railway and Steamship Association formerly extended to the Potomac River and was de-

scribed not by boundaries but by the lines traversing the territory. In 1892 the northern boundary was moved south of the Potomac to the state lines between North Carolina and Virginia and includes all other territory east of the Mississippi and south of the Potomac. (p. 538.)

Routes to Charlotte. Freight from Pacific Coast Terminals reaches Charlotte via the Southern route and Louisville & Nashville Railroad, or Southern Railway via Atlanta or by Central or Northern routes via trunk lines direct or through eastern terminals and all-rail or water-and-rail lines.

From Pittsburg, Ohio, the middle western, northwestern or southwestern sections freight reaches Charlotte, Louisville & Nashville or Southern roads via Atlanta or Paint Rock, Chesapeake & Ohio, Norfolk & Western via Lynchburg or Roanoke or the trunk lines via eastern terminals and all-rail or water-and-rail lines, as stated above, and Lynchburg or Roanoke, or via the Seaboard Air Line from Atlantic Coast ports.

Freight from trunk line eastern terminals, Boston, Providence, New York and Philadelphia reaches Charlotte by all-rail or water-and-rail lines through Baltimore, Norfolk, Richmond, Portsmouth, Newport News, Wilmington, the Southern Railway or Seaboard Air Line and Lynchburg or Roanoke.

Freight from the southeast comes to Charlotte via the Seaboard Air Line or Southern Railway.

Freight from New Orleans and points in that section reaches Charlotte via the Southern Railway, the L. & N. R. R., the Norfolk & Western Railway, or Seaboard Air Line, through Atlanta or water-and-rail lines, through Atlantic Coast ports.

The gateways for this traffic may be said to include Atlanta and Lynchburg and the ports of Wilmington, Portsmouth, Norfolk and Richmond.

Class and commodity rates concerning which complaint is made are shown by the following tables:

CLASS AND COMMODITY RATES.
(in cents per 100 lbs. unless otherwise shown.)

From Boston and Providence To		1	2	3	4	5	6	Coffee.	Molasses.	Canned meats.	Potatoes.
Norfolk,	all-rail	45	39	34	30	25	22	25	25	25	*28
Richmond,	all-rail	45	39	34	30	25	22	25	25	25	25
	sea and rail	40	35	30	25	22	18	25	*70	25	*35
Lynchburg,	all-rail	54	47	38	28	23	21	28	23	28	21
	sea and rail	54	47	38	25	22	18	25	22	25	18
Danville,	all-rail	79	69	57	42	37	31	42	31	42	31
	sea and rail	71	63	52	38	34	29	38	29	34	29
Wilmington,	all-rail	83	67	58	50	39	29	50	39	50	29
	sea and rail	68	57	48	41	33	24	24	17	41	30
Charlotte,	all-rail	108	95	81	66	57	46	66	46	57	46
	sea and rail	96	85	72	58	51	41	58	41	46	41

*Per bbl.

To Norfolk, Va.
From New York and Philadelphia.

	1	2	3	4	5	6	Coffee.	Molasses.	Canned meats.	Potatoes.
From New York,										
All rail	45	39	32	24	20	16	24	20	24	16
From Philadelphia,										
All rail	30	27	22	18	14	11	18	14	18	11
To Richmond, Va.										
All rail	33	29	24	21	15	13	15	*65	15	*27
To Lynchburg, Va.										
All rail	54	47	38	25	22	18	25	22	25	18
Sea and rail	54	47	38	25	22	18	25	22	25	18
To Danville, Va.										
All rail	74	64	52	37	32	26	37	26	37	26
Sea and rail	66	58	47	33	29	24	33	24	29	24
To Wilmington, N. C.										
All rail	75	62	52	44	34	24	44	20½	44	24
Sea and rail	63	52	43	36	28	19	19	14	36	*29
To Charlotte, N. C.										
All rail	103	90	76	61	52	41	61	41	52	41
Sea and rail	91	80	67	53	46	36	53	36	41	36

*Per bbl.

CLASS AND COMMODITY RATES.
(In cents per 100 lbs. unless otherwise shown.)

From Baltimore To		1	2	3	4	5	6	Coffee.	Molasses.	Canned meats.	Potatoes.
Norfolk,	all rail	30	27	22	18	14	11	18	14	18	11
Richmond,	all rail	20	18	15	14	11	8	11	*45	10	*20
Lynchburg,	all rail	49	42	33	22	19	16	22	19	22	16
	sea and rail	49	42	33	22	19	16	22	19	22	16
Danville,	all rail	68	58	46	33	28	22	33	22	33	22
	sea and rail	60	52	41	29	25	20	29	20	25	20
Wilmington,	all rail	69	56	46	40	30	21	40	19½	26	21
	sea and rail	57	46	37	32	24	16	18	13	20	*29
Charlotte,	all rail	97	84	70	57	48	37	57	37	48	37
	sea and rail	85	74	61	49	42	32	49	32	37	32

*Per bbl.

From Chicago To	1	2	3	4	5	6	Flour.	Grain.
Norfolk, Richmond and Lynchburg, Va.	72	62	47	32	27	22	14½	14½
Danville, Va.	108	90	70	50	43	33	31½	28½
Wilmington, N. C.	122	102	78	58	47	37	30	27
Charlotte, N. C.	140	120	95	70	60	47	42½	38½

From East St. Louis To	1	2	3	4	5	6	Flour.	Grain.
Norfolk, Richmond and Lynchburg	84	72½	55	37½	32	26	17½	17½
Danville	106	89	70	50	43	33	31½	26½
Wilmington	120	101	78	58	47	37	30	25
Charlotte	138	119	95	70	60	47	42½	36½

The rates from St. Louis, Mo., are made by adding the bridge transfer to the East St. Louis rates to those points.

CLASS AND COMMODITY RATES.
(in cents per 100 lbs.)

From Cincinnati, O., and Louisville, Ky., To	1	2	3	4	5	6	Flour.	Grain.
Norfolk, Richmond and Lynchburg	62	53½	40½	27½	23	18½	12	12
Danville	68	56	45	33	28	21	21½	18½
Wilmington	82	68	53	41	32	25	20	17
Charlotte	100	86	70	53	45	35	32½	28½

CLASS AND COMMODITY RATES.
(in cents per 100 lbs.)

From Nashville, Tenn., To								
Norfolk, Richmond and Lynchburg	77	69½	54	38½	33	27	18½	18½
Danville, Va.	62	51	42	30	25	18	19½	16½
Wilmington, N. C.	76	63	50	38	29	22	18	15
Charlotte, N. C.	94	81	67	50	42	32	30½	26½

From Memphis, Tenn., To	1	2	3	4	5	6	Flour.	Grain.
Norfolk, Richmond and Lynchburg	86	76½	59	41½	35	29	20½	20½
Danville	76	64	51	39	32	23	22½	19½
Wilmington	90	76	59	47	36	27	19	18
Charlotte	108	94	76	59	49	37	33½	29½

From New Orleans, La., To	1	2	3	4	5	6	Coffee.	Sugar.	Rice.	Molasses.
Norfolk, Richmond and Lynchburg	92	82	72	58	47	41	40	32	32	26
Danville	110	102	85	72	56	53	52	43	43	37
Wilmington	91	78	71	68	53	43	40	35	30	27.3
Charlotte	101	88	76	65	50	42	50	44	44	47

While complaint is made generally of class and commodity rates from points of origin to Charlotte as compared with Lynchburg and Danville more particularly, the differences in which are shown by the foregoing tables of rates, especial weight is given and attention called to the differences in rates on certain commodities illustrative of the general situation, which differences result in undue preferences and advantages given to other points and undue prejudice and disadvantage to Charlotte.

It is claimed by the complainant, on behalf of its members, that they find it necessary in the conduct of their business to keep some of their goods in New Orleans, some in Richmond, occasionally at Lynchburg, at mill centers in the west, and at factories in certain lines, shipping from such storage points directly to their customers, as the favorable rates to Virginia gateways render it impossible to assemble miscellaneous stock at Charlotte warehouses and ship from this center to their local customers in competition with dealers more favorably situated at certain of these gateways, as Lynchburg, Norfolk, Richmond, etc.

The advantages held by dealers at these points can be amp illustrated by comparison with a single one, Lynchburg, tables rates being submitted showing differences in rates and incide ally profits on the same article to the same destination throu the two competing points. For example, the rate on flour fro Louisville, Ky., via Lynchburg to China Grove, N. C., distan from Lynchburg 173 miles, is 32½ cents per 100 lbs. per ca load of 40,000 lbs., while from the same point via Charlotte China Grove, distance from Charlotte 34 miles, it is 42½ cen being $40 per car in favor of Lynchburg merchants.

The rate on molasses from New Orleans via Lynchburg Camden, S. C., distance from Lynchburg 295 miles, distan from Charlotte 88 miles, C. L., via Lynchburg is 58 cents p 100 lbs., via Charlotte 71 cents, being $52.00 per car in fav of Lynchburg.

The rate on canned fish and vegetables from Pacific Coa points, via Lynchburg, to Albemarle, N. C., distance 194 mil $1.13 per 100 lbs., and via Charlotte, distance 75 miles, $1.3 is $68.00 per car in favor of Lynchburg merchants.

The rates from Boston and Providence to Norfolk are fix by water transportation, the competition being at once actu active and controlling, and the class rates have remained t same for several years, and are correctly set forth in the petitio

These rates are the same all-rail to Richmond as to Norfol but by sea-and-rail are lower by the following differential 5 cents per 100 lbs. on the 1st and 4th classes, 4 cents on t 2nd, 3rd and 6th classes, and 3 cents on the 5th class, the Sout ern Classification governing to Richmond and the Official Clas fication to Norfolk.

For the most part the trunk line rates to the West are t measures of the rates to intermediate points. The rates fro Boston and Providence to Cincinnati all rail are for the s numbered classes 65-57-44-30-26-22 and the rail-and-wat rates the following differentials below those rates 5-4-3-2-2-1 The rates to intermediate points are sometimes lower but nev higher than to Cincinnati.

The rates from Boston and Providence to Lynchburg are a rail 54-47-38-25-23-21 and rail-and-water 54-47-38-25-22-18.

first class. On traffic for Southern territory the roads from Chicago receive 40 cents to the Ohio River, and charge a like rate on first class business to Carolina territory.

By the trunk lines rates of 116 per cent of the Chicago-New York rates are charged from East St. Louis to New York and differentials less to Baltimore, and by the Chesapeake and Ohio no higher rates to Norfolk proper, (84-72.5-55-37.5-32-26) or to Richmond or Lynchburg.

The rates to Southwestern points from Chicago, as illustrated by reference to Danville, for instance, being established, the rates from Cincinnati and Louisville are fixed differentials less, and from Cairo and Evansville differentials higher, than the last named to all Carolina territory, north of the "Walhalla-Columbia-Wilmington" line. The rates from St. Louis and East St. Louis are made higher than Evansville and Cairo rates by differences beginning with 28 cents on first class. Chicago to Wilmington rates are made with differences less from Cincinnati and differences higher for Cairo and Evansville and differentials still higher for St. Louis and East St. Louis, and the rates to Charlotte are made in the same manner.

Eighty-seven per cent. of the rates from Chicago to New York is taken as the rates from Cincinnati to New York, and the Cincinnati-Baltimore rates are made by differentials under the New York rates. Differentials were conceded the Chesapeake and Ohio railway which established rates less than the all-rail trunk line rates from Cincinnati to Baltimore and also less than its own rates to Norfolk, Newport News and Richmond, but advanced its rates to Baltimore on the passage of the Act to regulate commerce to not less than its Cincinnati-Norfolk rates.

To Baltimore from Louisville the all-rail trunk-line rates are as follows: 72-62-47-32-27-22.

All-rail and water rates via Newport News are: 64-56-43-29-25-20.

Its rates to Lynchburg are made, by its construction of the Act to regulate commerce, not higher than its rates to Norfolk from Cincinnati and Louisville.

To Danville from Cincinnati and Louisville the Chicago-Danville rates are taken as a basis and the Chicago-Cincinnati

Ohio Railway making no higher charge than its through rates to Cincinnati.

From New York to Wilmington and from Philadelphia to Wilmington the rates on the numbered classes are respectively, 63-52-43-36-28-19.

The rates from Baltimore to Norfolk are fixed by the water lines and governed by Southern Classification as follows: 20-18-15-14-11-8, and all-rail as well as sea-and-rail these rates were in force to Richmond.

The rates from the West to the territory in question are measured primarily by the trunk line rates from Chicago to New York. The all-rail rates from Chicago to Baltimore are certain differentials below the New York rates.

The Chesapeake and Ohio Railway on the passage of the Interstate Commerce Act made in connection with the water lines, rail-and-water rates lower by certain differentials than the all-rail rates which were conceded by the Trunk Lines, and this left the rates to Baltimore via Newport News lower than to Norfolk, Newport News and Richmond, but under the readjustment the Chesapeake and Ohio adopted as a minimum to Baltimore the trunk line all-rail rates to Baltimore, and then on its construction of the Act that it forbids any higher intermediate rates insisted on making the same rates to the Virginia cities, Norfolk, Richmond and Lynchburg as to Baltimore.

To Lynchburg the Southern and Cincinnati Southern make the same rates as the Chesapeake and Ohio fixes from Cincinnati and Louisville.

To Danville the local rates from Lynchburg are added and to Wilmington the local rates from Richmond, except to meet Chicago competition via North Atlantic ports on certain western traffic the rates are less than the combination to and from Richmond.

To Charlotte the rates are made by adding to the Lynchburg or Richmond rates the locals beyond. This method applies to all traffic from Chicago to Buffalo and Louisville to Pittsburg, to Carolina territory.

From Chicago to Lynchburg the rate is 72 cents first class, from Lynchburg to Charlotte 68, or total through rate of $1.40

first class. On traffic for Southern territory the roads from Chicago receive 40 cents to the Ohio River, and charge a like rate on first class business to Carolina territory.

By the trunk lines rates of 116 per cent of the Chicago-New York rates are charged from East St. Louis to New York and differentials less to Baltimore, and by the Chesapeake and Ohio no higher rates to Norfolk proper, (84-72.5-55-37.5-32-26) or to Richmond or Lynchburg.

The rates to Southwestern points from Chicago, as illustrated by reference to Danville, for instance, being established, the rates from Cincinnati and Louisville are fixed differentials less, and from Cairo and Evansville differentials higher, than the last named to all Carolina territory, north of the "Walhalla-Columbia-Wilmington" line. The rates from St. Louis and East St. Louis are made higher than Evansville and Cairo rates by differences beginning with 28 cents on first class. Chicago to Wilmington rates are made with differences less from Cincinnati and differences higher for Cairo and Evansville and differentials still higher for St. Louis and East St. Louis, and the rates to Charlotte are made in the same manner.

Eighty-seven per cent. of the rates from Chicago to New York is taken as the rates from Cincinnati to New York, and the Cincinnati-Baltimore rates are made by differentials under the New York rates. Differentials were conceded the Chesapeake and Ohio railway which established rates less than the all-rail trunk line rates from Cincinnati to Baltimore and also less than its own rates to Norfolk, Newport News and Richmond, but advanced its rates to Baltimore on the passage of the Act to regulate commerce to not less than its Cincinnati-Norfolk rates.

To Baltimore from Louisville the all-rail trunk-line rates are as follows: 72-62-47-32-27-22.

All-rail and water rates via Newport News are: 64-56-43-29-25-20.

Its rates to Lynchburg are made, by its construction of the Act to regulate commerce, not higher than its rates to Norfolk from Cincinnati and Louisville.

To Danville from Cincinnati and Louisville the Chicago-Danville rates are taken as a basis and the Chicago-Cincinnati

rates deducted, beginning with 40 cents on first class, for all shipments to Southeastern territory, the locals and through rates corresponding on the first six classes where the specification is the same. The same method is used in constructing the rates to Wilmington and Charlotte.

The rates Nashville to Baltimore are made by adding to the Louisville-Baltimore rates the proportional charges from Nashville to Louisville and by rail-and-water through Norfolk is differentials below the all-rail rates, and by the Chesapeake & Ohio not less than the rates to Norfolk, which in their turn do not exceed those to Richmond and Lynchburg.

The rates to Wilmington, Charlotte and Danville are made certain differentials less from Nashville than from Cincinnati and Louisville. From Memphis the rates are based upon the rates from East St. Louis, being something higher.

From New Orleans to the Carolina territory the rates are controlled by the water routes. The Morgan line publishes rates from New Orleans to Newport News, Boston, Philadelphia and Baltimore, in connection with the Old Dominion line to Norfolk, Richmond and Portsmouth. The Illinois Central and Chesapeake and Ohio via Louisville publish rates to Norfolk controlled by the water rates, charging no higher to Richmond and Lynchburg. The water rates to Norfolk are, on rice 29 cents, sugar, C. L., 27 and less than C. L. 29; molasses $1.40 per bbl.

To Danville Southern Railway locals from Lynchburg are added. To Wilmington from New Orleans rates are controlled by water, the Morgan line, rice 27 cts., sugar 32, molasses 24. Tramp boats have carried as low as 15 cents.

To Charlotte the rates are made from New Orleans to compete with shippers from the East. The roads from New Orleans to Atlanta decline some of these combination rates and insist on a minimum of 15 cents to Atlanta. The Carolina lines fix rates from the gateways into Carolina territory and allow the New Orleans lines to make such rates if their allowances from Atlanta are satisfactory, and to this territory generally the New Orleans proportional is less than to Atlanta proper.

The following tables showing the changes in class rates which

had been made at the dates named to Charlotte from western points were submitted by defendant carriers.

CLASS RATES.
(in cents per 100 lbs.)

To Charlotte	1	2	3	4	5	6
From Chicago						
Feb. 24, 1892	140	120	95	70	60	47
July 16, 1894	132	114	93	70	56	47
Aug. 1, 1894	140	120	95	70	60	47
Sept. 10, 1896	112	96	72	54	46	36
Sept. 28, 1896	140	120	95	70	60	47
From St. Louis						
Jan. 1, 1888	160	140	122	106	88	73
July 16, 1888	145	126	104	79	65	52
Feb. 16, 1889	145	126	102	77	64	51½
Oct. 16, 1889	138	119	95	70	60	47
Sept. 16, 1896	110	95	75	54	46	36
Sept. 19, 1896	98	84	66	47	40	31
Oct. 1, 1896	138	119	95	70	60	47
From Louisville						
Jan. 1, 1888	122	107	94	84	70	59
July 16, 1888	107	93	79	62	50	40
Feb. 16, 1889	107	93	77	60	49	39½
Oct. 16, 1889	100	86	70	53	45	35
Sept. 16, 1896	72	62	50	37	31	24
Sept. 19, 1896	60	51	41	30	25	19
Oct. 1, 1896	100	86	70	53	45	35
From Cincinnati						
July 16, 1888	107	93	79	62	50	40
Feb. 16, 1889	107	93	77	60	49	39½
Oct. 16, 1889	100	86	70	53	45	35
June 16, 1890	100	86	70	53	45	37
Mar. 2, 1891	100	86	70	53	45	35
Sept. 16, 1896	72	62	50	37	31	24
Sept. 19, 1896	60	51	41	30	25	19
Oct. 1, 1896	100	86	70	53	45	35
From Memphis						
Jan. 1, 1888	130	115	100	90	74	61
July 16, 1888	115	101	85	68	54	42
Feb. 16, 1889	115	101	83	66	53	41½
Oct. 16, 1889	108	94	76	59	49	37
Sept. 16, 1896	80	70	56	43	35	26
Sept. 19, 1896	68	59	47	36	29	21
Oct. 1, 1896	108	94	76	59	49	37
To Charlotte						
From Cairo						
Sept. 17, 1885	131	114	99	84	69	51
Sept. 1, 1888	117	103	87	70	56	44
Feb. 20, 1889	117	103	85	68	55	43
Nov. 1, 1889	110	96	78	61	51	39
Sept. 16, 1896	82	72	58	40	37	28
Sept. 19, 1896	70	61	49	38	31	23
Oct. 1, 1896	110	96	78	61	51	39

CLASS RATES.
(in cents per 100 lbs.)

From New Orleans						
Feb. 15, 1888	183	158	139	116	94	74
Feb. 25, 1888	178	153	134	111	90	72
May 16, 1890	171	146	125	102	85	67
Dec. 15, 1895	101	88	76	65	50	42

Changes in class rates to Lynchburg from various western points.

CLASS RATES.
(in cents per 100 lbs.)

To Lynchburg From Chicago	1	2	3	4	5	6
Aug. 1, 1891	72	62	47	32	27	22
Dec. 1, 1902	72	62	47	32	27	22
East St. Louis						
July 1, 1891	84	72½	55	37½	32	26
Louisville						
April 5, 1887	62	53½	40½	27½	23	18½
Cincinnati						
July 1, 1891	62	53½	40½	27½	23	18½
Memphis						
Feb. 1, 1888	84	72½	55	41½	35½	29
Mar. 5, 1888	84	72½	55	37½	32	26
Apr. 25, 1889	76	66½	51	34½	30	24
July 5, 1889	86	76½	59	41½	35	29
Nashville						
Feb. 1, 1888	85	71½	56½	42½	35½	30
Mar. 5, 1888	85	71½	56½	39½	33	30
July 6, 1888	56	48½	37½	24½	20	15½
Feb. 1, 1893	77	69½	54	38½	33	27
New Orleans						
June 20, 1890	95	85	70	65	55	45
Nov. 20, 1890	92	82	72	62	52	47
Sept. 1, 1893	92	82	72	58	47	41

Reduction in first class rates to Charlotte from eastern points for dates named.

FIRST CLASS RATES.
(in cents per 100 lbs.)

To Charlotte, sea and rail.

From	Jan. 1, 1882	June 1, 1882	Sep. 1, 1882	Sep. 1, 1887	Sep. 1, 1889	June 9, 1894	Aug. 1, 1894
Boston and Providence	111	116	121	110	96	72	96
New York and Philadelphia ..	106	111	116	105	91	67	91
Baltimore	100	105	110	99	85	65	86

Old Dominion S. S. Co., New York to Norfolk.

	Classification		1	2	3	4	5	6
May 19, 1892	Southern	......	20	18	15	12	10	8
June 23, 1892		......	22	20	17	13	11	9
July 23, 1892		......	20	18	15	12	10	8
Oct. 15, 1892	Official	......	28	24	21	18	13	11
Dec. 1, 1892	Southern	......	28	24	21	18	13	11
June 18, 1894		......	21	18	16	14	10	8
Aug. 1, 1894		......	28	24	21	18	13	11

Old Dominion S. S. Co., New York to Richmond.

Oct. 15, 1892	Official	......	33	29	24	21	15	13
Dec. 1, 1892	Southern	......	33	29	24	21	15	13
June 18, 1894		......	25	22	18	16	11	10
Aug. 1, 1894		......	33	29	24	21	15	13
Mar. 20, 1896		......	28	24	21	18	13	11

CLYDE LINE RATES.

PHILADELPHIA to RICHMOND.

(in cents per 100 lbs.)

Oct. 15, 1892	31	27	22	19	14	12	Official
Dec. 1, 1892	31	27	22	19	14	12	Southern
June 18, 1894	23	20	17	14	11	9	"
Aug. 1, 1894	31	27	22	19	14	12	"
May 1, 1895	27	24	19	17	13	11	"
Mar. 20, 1896	27	24	19	17	13	11	South St. Frt. As.

PHILADELPHIA to NORFOLK.

(in cents per 100 lbs.)

Oct. 15, 1892	26	22	19	16	12	10	Official
Dec. 1, 1892	26	22	19	16	12	10	Southern
June 18, 1894	20	17	14	12	9	8	"
Aug. 1, 1894	26	22	19	16	12	10	"
Aug. 15, 1894	28	24	21	18	13	11	"
May 1, 1895	30	26	23	20	15	11	"
Mar. 20, 1896	28	24	21	18	13	11	South St. Frt. As.

Local and through class rates from Chicago to Charlotte.

Western Class Rates (in cents per 100 lbs.)

FROM	to						
Chicago	Cairo	40	34	25	17	15	12
Cairo	Atlanta	32	28	22	15	12	10
Chicago	Atlanta	72	62	47	32	27	22
Atlanta	Charlotte	68	58	48	38	33	25
Chicago	Charlotte	140	120	95	70	60	47
Chicago	Virginia Cities	72	62	47	32	27	22
Atlanta	Charlotte proper	75	65	55	45	37	29

Some modifications of the rates complained of have been effected since the filing of the complaint.

Of these the principal changes are as follows:

From Boston and Providence To	1	2	3	4	5	6	Coffee.	Molasses.	Canned Meats.	Potatoes.
								Bbl.		
Richmond, sea and rail	45	39	34	30	25	22	30	75	30	*35
								100 lbs.		
Danville, all rail	83	73	60	45	38	32	45	38	45	32
Danville, sea and rail	75	67	55	41	35	30	41	35	41	30
From New York and Philadelphia To										
Richmond, all rail	37	32	26	23	17	14				
Danville, all rail	78	68	55	40	33	27	40	33	40	27
Danville, sea and rail	70	62	50	36	30	25	36	30	36	25
From Baltimore To										
Richmond, all rail	26	22	18	16	13	10	13	*50		
Lynchburg, all rail and sea and rail	52	45	35½	24	20	16	24	20	24	
Danville, all rail	72	62	49	36	29	23	36	29	36	23
Danville, sea and rail	64	56	44	32	26	21	32	26	32	21

*Per bbl.

These changes while affecting the rates to competing points other than Charlotte, principally by slight increases, and to that extent relieving the discriminations complained of, do not however satisfy the complaint.

The rate from Chicago to the Ohio River on joint through traffic for freight destined for points south of Virginia has been recently reduced from 40 cents to 35 cents per 100 pounds on first class with corresponding reductions on the lower classes as follows: 5, 4, 3, 2, 2, 2. As this reduction does not apply to goods destined for the Virginia gateways, the discriminations against Charlotte are still further relieved.

Conclusions.

The system of making rates into the so-called Carolina territory has been in operation and with little change since the passage of the Interstate Commerce Act. The interpretation of this law by the Chesapeake & Ohio Railway Company, practically

the same as that of the Trunk Line roads north of the Potomac and Ohio rivers and east of the Mississippi, construes the law to forbid, under ordinary circumstances, any lower rate to a terminal station than to one between the initial and terminal points.

The first result of the application of this principle, striking, as compared with the methods of rate-making previously practiced throughout the Southeastern territory and still, for the most part, the basis on which charges are fixed in that locality, was the establishment of what have been since known as the Virginia Gateways.

These points, as Norfolk and Lynchburg, etc., taking a rate no higher than the through rate to the seaboard, became natural basing points for distribution to contiguous territory by the addition of the local rates, and have ever since been the occasion of more or less complaints of discrimination from localities not so favored.

In this case, to avoid confusion, the single gateway Lynchburg may be taken as an example for comparison with Charlotte rates.

The low rates to Lynchburg from the East, North and West are not vigorously contested by the complainants, since every reduction to that point may be expected to reduce the combination to Charlotte, but the high rates between Lynchburg and Charlotte, alike in many cases on carload and less than carload lots, and alike, too, for the most part, whether on through routes from distant points or strictly local shipments from Lynchburg, leave Charlotte at some disadvantage as a distributing point, and the same is true of most places situated in the vicinity of localities favored by low rates whether the result be competition by water, with other carriers, or favoritism.

The total through rates to Charlotte were not a subject of special complaint. In fact, any charge of unreasonableness on through rates from the West was distinctly disclaimed, the injustice arising, as witnesses explained, not because the through rates to Charlotte were unreasonably high, but because the rates to Lynchburg were so much lower, while the balance of the through rates were the same as the locals.

The whole Trunk Line territory is served in this manner and

the favorable rates to the Virginia Gateways are simply the result of the Chesapeake & Ohio Railway Company adopting the construction by the Trunk lines of the Interstate Commerce Act.

As an instance of the general application of this system of rate-making and in support of the contention of the defendants that Charlotte is not alone subjected to embarrassing conditions of which it complains, it is shown that of the stations in this territory served by defendant, the Southern Railway, 74, at a less distance than Charlotte, take the same rates and 8, at a less distance, take higher rates than Charlotte. That on the same line in this territory, on a traffic from Chicago and the Ohio River Crossings, 78 stations at a less distance take higher rates than Charlotte, and 20 take the same rates, and on another defendant road, the Seaboard Air Line, from eastern cities to stations a less distance than Charlotte, 37 points take the same rates and 32 higher rates.

This is not a justification of unreasonable rates and if the rates were too high would but aggravate the offense, but it does relieve the situation of any semblance of prejudice directed against Charlotte, its trade or shippers.

The rates from Lynchburg to Charlotte and other stations in the Carolina territory are apparently high as compared with through rates to the former point from Chicago. 72 cents from Chicago to Lynchburg and 68 cents first class from Lynchburg to Charlotte would, under like conditions, seem an exorbitant rate for the shorter distance, but the through rates to the seaboard, which govern the rates to the Virginia Gateways, are the result of long strife, strenuous competition, both of water and other carriers, and all together under such different conditions and laws of trade and transportation, as to bear no possible relation to the shorter rate. The latter must be judged alone or in comparison with rates for like distances where the conditions bear some semblance of similarity.

It was shown by way of defense that these rates were not unusual as compared with other rates, for in the Southern Territory where charges have not fallen so rapidly as competition and dense traffic have caused them to in the Trunk Line Territory,

that the local rates to many points for 200 miles to 300 miles exceeded the Lynchburg or Richmond rates to Charlotte, the former being 207 miles distant and the latter 282 miles.

The first class rate is 68 cents and the Alabama Railroad Commission for 282 miles, the distance from Richmond, approves a rate of 98 cents, the Georgia Commission 99 cents, the South Carolina Commission 76 cents and the North Carolina Commission 68 cents.

These maximum rates are not enforced, but are permitted by the State authorities.

The roads themselves in the Southeastern territory, where, with less traffic and for other considerations, they require higher rates than their northern neighbors, and where less competition has left them without that external pressure that is the most potent factor in the reduction of rates, have always maintained a higher scale.

From Chattanooga to Elberton, Georgia, 246 miles, the first class rate is 81 cents per hundred pounds. From Atlanta to Columbus, Miss., 290 miles, 77 cents. From Birmingham to Winona, Miss., 208 miles, 82 cents. From Nashville to Dalton, Ga., 191 miles, 68 cents. From Nashville to Atlanta, 289 miles, 72 cents. These rates are high and do not, of themselves, justify the rates from Richmond and Lynchburg to Charlotte, but they do serve to show that the Charlotte situation is not unique, and that Charlotte and its contiguous territory is not subjected to the highest burdens on the movement of traffic in and out.

No proof was submitted that the local rates were unreasonably profitable to the defendants. The total through rates from western points were not specifically charged as unreasonable. As an instance, one of the complaining witnesses thought the grain rate of 28½ cents from Louisville to Charlotte a "reasonable rate" and said, "we are satisfied with the rate."

Again this does not justify the rates if too high, but emphasizes the condition that the real complaint of Charlotte shippers grows out of the fact that there are no through rates to Charlotte on western traffic, except by the addition of the local rates from Lynchburg. If the railroads established through rates to Charlotte, as is so often done, something less than the sum of

the locals then the Charlotte shippers would have an advantage equal to that difference, and the principal cause of complaint would be removed.

While the Commission has approved wherever established this system of through routes by connecting lines, with rates for the longer distances something below the sums of the locals, it is a matter which depends upon agreement and joint arrangement of the roads forming the through lines, and the Commission has no authority to enforce such arrangements. If the through rates are not unreasonable, the Commission cannot condemn the same on account of the divisions thereof to the various roads forming the through lines, the law and the public being alike served by rates in the aggregate reasonable, and not affected by their distribution.

In the present case the remedy rests alone with a modification of the system of charges to the territory in question, and the principal cause of complaint may be removed by an agreement of the connecting carriers to through rates to terminal points something less than the addition of the Lynchburg proper rates, and the Commission recommends such action to the consideration of the roads. We have no authority to enter an order commanding such agreement, but in consonance with the practice over so large a portion of the country, and controlling so great a percentage of the traffic, any other method must remain a constant source of irritation and complaint, be considered an injustice by the shippers, and their discontent an embarrassment to the roads. In view of the ruling of the courts in the Troy case, 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45, the Chattanooga case, 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516, the Behlmer case, 175 U. S. 648, 44 L. ed. 309, 20 Sup. Ct. Rep. 209, the Social Circle case, 162 U. S. 187, 40 L. ed. 936, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700, the Maximum Rate case, 167 U. S. 479, 42 L. ed. 243, 17 Sup. Ct. Rep. 896, the Danville case, 122 Fed. 800, and the Wilmington case, 124 Fed. 624, the Commission is unable to find in the facts presented any basis for an order of relief which could be enforced. It follows that the complaints must be dismissed.

No. 751.

IN THE MATTER OF CHARGES FOR THE TRANSPORTATION AND REFRIGERATION OF FRUIT SHIPPED FROM POINTS ON THE PERE MARQUETTE AND MICHIGAN CENTRAL RAILROADS.

Decided June 22, 1905.

1. Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that the respondent railroad companies, holding themselves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic.
2. During performance of the transportation the car is to every practical intent the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or lease.
3. Where a railroad company holds itself out as the carrier of a commodity which can only move under refrigeration, its duty extends ordinarily to furnishing that refrigeration, for the icing is not a mere incident to the transportation service, but is a part of the service itself, and properly speaking, it is not ice but refrigeration that the carrier furnishes to accompany the shipment during every movement of its journey. In the case under consideration, where the railroad company insists that the ice shall be supplied only by the party whom it appoints, and where it collects from the shipper and passes over to this party the compensation for that service, the railroad company must stand responsible for the refrigeration as for any other part of the transportation.
4. Refrigeration, being incumbent upon the carrier as part of the transportation, the charge for that service stands like any other charge for transportation. It is the duty of the carrier to publish, file with the Commission, and observe its refrigeration charges, and the Commission has the same jurisdiction to inquire into the justice and reasonableness of such charges as of any other charge for the transportation of passengers or property.

5. It is not within the province of the Commission to prescribe the method or kind of refrigeration charges which shall be adopted by the carrier.
6. A reasonable refrigeration charge on Michigan fruit shipped to interstate destinations from points in Michigan, when based upon the ice actually used, would be $2.50 per ton, and reasonable and just charges, if made by the car, are also found and stated for the service from Michigan to the destinations involved. As a result of this investigation the Michigan Central R. Co. has established for the present season the reasonable charge of $2.50 per ton for ice actually used, and that company is dismissed from the proceeding. The Pere Marquette R. Co., while under contract to continue its use of Armour cars during the present season, has made reductions in its refrigeration charges amounting to from 15 to 30 per cent to apply during this season, and has filed a statement with the Commission that it intends for the season of 1906 to purchase or lease its own equipment and also furnish refrigeration at $2.50 per ton for the ice used in transit. For reasons stated, including the consideration that the Commission is without authority to fix rates for the future, an order should not be issued at this time.

Martin S. Decker for the Commission.

George W. Plummer for National League of Commission Merchants.

Jesse F. Orton for Grand Rapids Shippers.

Roger S. Powell for Western Fruit Jobbers Association and the Knudson-Ferguson Fruit Company.

R. M. Shaw for Michigan Central R. R. Co.

F. W. Stevens for Pere Marquette R. R. Co.

A. R. Urion and *Frank Hagerman* for Armour Car Lines.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

The above matter was first heard in June, 1904, and a report and opinion was then published which is referred to and made a part of this report. The essential facts involved are stated there and no attempt will be made to repeat them here.

The Commission then reached the conclusion that these icing charges were too high and recommended that they be reduced. It did not, for the reasons stated in that opinion, at that time make a specific order, but said that unless its recommendations were in substance complied with by October 1, 1904, it would

proceed further in the case. While we were informed from time to time that attempts were being made to bring these charges into conformity with the suggestions of the Commission, nothing definite was done, and on March 25, 1905, the case was assigned for further hearing on May 9 at Chicago.

Upon the opening of that hearing the Michigan Central Railroad Company stated that it had purchased the necessary refrigeration equipment and would furnish during the coming season its own refrigerator cars, supplying ice at $2.50 per ton for the amount actually used. An examination of our tariffs shows apparently that the Michigan Central Company has published schedules in accordance with this statement.

It was stated on behalf of the Pere Marquette Railroad Company and the Armour Car Lines Company that frequent attempts had been made to reduce these charges but that owing to changes in the ownership and management of the Pere Marquette Railroad no definite agreement had been reached previous to the assignment of this matter for further hearing. It was further stated, however, that since that time a definite arrangement had been concluded by which these charges were to be reduced in all directions by from 15 to 30 per cent of the charges in force during the season of 1904. Those shippers who were present objected that the charges as thus reduced were still excessive and insisted that the hearing should proceed.

The only question of fact involved was the reasonableness of the icing charges. In the former hearing the Commission had specific evidence as to the cost of furnishing ice to a few destinations but the testimony was not sufficiently full so that we felt warranted in expressing an opinion of general application, and this further hearing was assigned for the purpose of obtaining more definite information upon that subject.

The service of refrigeration consists of two elements. There is first the cost of the ice itself and there is in addition, as that service has been rendered by the Armour Car Lines Company, a certain amount of inspection and supervision, beginning with the loading of the car and extending to delivery at final destination. The Car Lines Company did not present on this hearing any evidence in addition to what was given in the former hear-

ing and reported in the original findings of fact. Much testimony was introduced upon the reasonableness of these refrigeration charges, and directed to showing; first, what the actual cost of ice was, delivered in the bunkers, at the various points where it must be obtained for the purpose of icing these fruit cars to their various destination; second, the reasonable cost of performing this service by the car.

As stated in the original report, during the year 1901, and to some extent 1902, the carriers charged, in addition to the freight rate, $2.50 per ton, for the ice actually used. Many witnesses were introduced and many expense bills produced, showing actual transactions, for the purpose of proving what under this system the actual expense to the shipper had been. This testimony covered a great number of stations in all directions, and the attorney for the complainants was proceeding to show the same facts with respect to other destinations when an admission was made by the Armour Car Lines and the Pere Marquette Company to the effect that such testimony, if introduced, would tend to show to other points substantially the same relation between the actual cost in 1901 and the Armour charges in 1904 as had been established by the testimony already introduced. Evidence was also produced tending to show that upon the Northern Pacific Railway the actual cost of icing fruit cars from Yakima to St. Paul, a distance of 1800 miles, involving a haul of six and one-half days, was less than $25 per car. Without attempting to recite any of this testimony we find:

1. The cost of ice delivered in the bunkers throughout the State of Michigan is, on the average, approximately $2.00 per ton. As these cars of fruit proceed from Michigan to final destination they are necessarily iced at some points where the cost of the ice is greater than at the point of origin and this cost is not by any means uniform. We think and find that the actual cost of the ice delivered in the bunkers, including the cost of such examination as is necessary from time to time to ascertain what further and additional supply of ice is necessary, is between $2.00 and $2.50 per ton. If the charge is made upon the basis of ice actually used $2.50 per ton would in our opinion be a reasonable charge. This would materially exceed the actual

cost to the carrier in most instances and would leave an ample margin against whatever extra care and liability the carrier assumes in undertaking the service of refrigeration.

2. If the charge is to be made by the car we find that the following tariff from various Michigan points to the destinations named would be reasonable:

To	Peaches.	Grapes.
Aberdeen, S. D.	$22.50	$15.00
Albany, N. Y.	21.25	14.25
Albert Lea, Minn.	20.00	13.25
Algone, Iowa	20.00	13.25
Alliance, Ohio	15.00	10.00
Altoona, Pa.	20.00	13.25
Ashland, Wis.	22.50	15.00
Atlanta, Ga.	20.00	13.25
Baltimore, Md.	25.00	16.50
Bay City, Mich.	12.50	8.25
Beloit, Wis.	17.50	11.50
Bennett, Iowa	20.00	13.25
Berwick, Pa.	21.25	14.25
Birmingham, Ala.	27.50	18.25
Bloomington, Ill.	17.50	11.50
Boston, Mass.	27.50	18.25
Buffalo, N. Y.	17.50	11.50
Burlington, Iowa	18.75	12.50
Cedar Rapids, Iowa	20.00	13.25
Centerville, Iowa	20.00	13.25
Champaign, Ill.	17.50	11.50
Chattanooga, Tenn.	20.00	13.25
Cherokee, Iowa	20.00	13.25
Chicago Ill. (via New Buffalo)	12.50	8.25
Chicago. Ill. (via Milwaukee Ferry)	15.00	10.00
Chillicothe, Ohio	15.00	10.00
Cincinnati, Ohio	15.00	10.00
Cleveland, Ohio	15.00	10.00
Clinton, Iowa	18.75	12.50
Columbus, Ohio	15.00	10.00
Concordia, Kan.	22.50	15.00
Council Bluffs, Iowa	20.00	13.25
Danville, Ill.	17.50	11.50
Davenport, Iowa	18.75	12.50
Dayton, Ohio	15.00	10.00
Deadwood S. D.	22.50	15.00
Denver, Colo.	25.00	16.50
Des Moines, Iowa	20.00	13.25
Detroit, Mich.	12.50	8.25
Dixon, Ill.	17.50	11.50
Dubuque, Iowa	18.75	12.50
Duluth, Minn.	22.50	15.00
East St. Louis, Ill.	18.75	12.50
Eaton, Ohio	15.00	10.00
Eau Claire, Wis.	17.50	11.50
Elmira, N. Y.	21.25	14.25
Erie, Pa.	17.50	11.50

To	Peaches.	Grapes.
Farmer City, Ill.	17.50	11.50
Findlay Ohio	15.00	10.00
Fisher Ill.	17.50	11.50
Fond du Lac, Wis.	17.50	11.50
Ft. Dodge, Iowa	20.00	13.25
Ft. Smith, Ark.	22.50	15.00
Frankfort, Ind.	15.00	10.00
Freeport, Ill.	18.75	12.50
Galesburg, Ill.	17.50	11.50
Gibson City, Ill.	17.50	11.50
Gloversville, N. Y.	21.25	14.25
Goodland, Ind.	15.00	10.00
Grand Forks, N. D.	22.50	15.00
Grand Island, Neb.	22.50	15.00
Grand Rapids, Mich.	12.50	8.25
Granville, N. Y.	27.50	18.25
Great Falls, Mont.	27.50	18.25
Greenville, Ohio	15.00	10.00
Hancock, Mich.	22.50	15.00
Hannaford, N D.	22.50	15.00
Hartford, Conn.	27.50	18.25
Hartford, Ind.	15.00	10.00
Hastings, Neb.	25.00	16.50
Helena, Mont.	27.50	18.25
Herman, Mo.	20.00	13.25
Houghton, Mich.	22.50	15.00
Huntington W. Va.	17.50	11.50
Huron, S. D.	22.50	15.00
Indianapolis, Ind.	15.00	10.00
Ironwood, Mich.	22.50	15.00
Jacksonville, Ill.	17.50	11.50
Johnstown, Pa.	20.00	13.25
Kansas City, Mo.	20.00	13.25
Keene, N. H.	27.50	18.25
Keokuk, Iowa	18.75	12.50
Knoxville, Tenn.	20.00	13.25
La Crosse, Wis.	20.00	13.25
La Salle, Ill.	17.50	11.50
Lincoln, Neb.	22.50	15.00
Little Rock, Ark.	20.00	13.25
Logansport, Ind.	15.00	10.00
Louisville, Ky	15.00	10.00
Madison, Wis.	17.50	11.50
Marinette, Wis.	17.50	11.50
Marquette, Mich. (via Straits of Mackinac)	17.50	11.50
Memphis, Tenn.	20.00	13.25
Menominee, Mich.	17.50	11.50
Milwaukee, Wis. (via Chicago)	15.00	10.00
Milwaukee, Wis. (via Ferry)	12.50	8.25
Minneapolis, Minn.	20.00	13.25
Minot, N. D.	25.00	16.50
Mitchell, S. D.	22.50	15.00
Mobile, Ala.	27.50	18.25
Montgomery, Ala.	27.50	18.25
Nashville, Tenn.	20.00	13.25
New Orleans, La.	27.50	18.25
New York, N. Y.	25.00	16.50
Omaha, Neb.	20.00	13.25

To	Peaches.	Grapes.
Oshkosh, Wis.	17.50	11.50
Peoria, Ill.	17.50	11.50
Philadelphia, Pa.	25.00	16.50
Pipeston, Minn.	20.00	13.25
Pittsburg, Pa.	17.50	11.50
Pueblo, Colo.	25.00	16.50
Racine, Wis.	15.00	10.00
Saginaw, Mich.	12.50	8.25
St. Joseph, Mo.	20.00	13.25
St. Louis, Mo.	18.75	12.50
St. Paul, Minn.	20.00	13.25
Sault Ste Marie, Mich (via Straits of Mackinac)	17.50	11.50
Sheboygan, Wis.	17.50	11.50
Shreveport, La.	27.50	18.25
Sioux City, Iowa	20.00	13.25
Sioux Falls, S. D.	22.50	15.00
Spokane, Wash.	30.00	20.00
Springfield, Ill.	17.50	11.50
Terre Haute, Ind.	15.00	10.00
Toledo, Ohio	12.50	8.25
Utica, N. Y.	21.25	14.25
Washington, D. C.	25.00	16.50
Waukesha, Wis.	17.50	11.50
Wausau, Wis.	17.50	11.50
Wichita, Kan.	22.50	15.00
Winona, Minn.	20.00	13.25
Zion City, Ill.	15.00	10.00

The charge above named for peaches should apply to plums, berries and other highly perishable fruits. Grapes should take a lower charge partly because they are shipped later in the season when the weather is cooler and partly because they inherently carry better. Possibly a still lower charge ought to be made in case of green apples and green pears, but we have no testimony before us from which we feel justified in expressing an opinion upon that point. These charges are undoubtedly more on the average than the ice would actually cost at $2.50 per ton. They are amply sufficient to cover all necessary inspection and to allow the carrier a safe margin of insurance against whatever liability it assumes in undertaking the service of refrigeration.

If not clearly stated in the original report, it should be stated here that the railroad companies collect these refrigeration charges with the freight charges and pay them over in due course to the Car Lines Company.

CONCLUSIONS.

In the original report in this case we expressed the opinion that if these respondent railroad companies held themselves out as carriers of perishable fruit, they must provide the necessary refrigerator cars for the transportation of that commodity. This results from the elementary principle that at common law railroads must furnish suitable facilities for the conduct of the business in which they engage, and are liable for failure to do so. If judicial authority is needed to confirm the application of that principle to the furnishing of refrigerator equipment, it is found in a very recent utterance of the Supreme Court of the United States. *The Southwark,* 191 U. S. 1, 48 L. ed. 65, 24 Sup. Ct. Rep. 1.

In this case the defendant had undertaken to transport a quantity of fresh meat from New York to Liverpool. Owing to the breaking down of the appliances for refrigeration soon after the vessel left port, the meat was injured, and this suit was brought to recover the resulting damages. The special contract under which this meat had been received for transportation stipulated that the carrier should not be liable for the consequences of insufficient refrigeration. The Harter Act provides that the ship owner shall not be allowed to stipulate against negligence in the discharge of his common law liability to furnish a seaworthy vessel. The question before the court was, therefore, whether the providing of the appliances for refrigeration was obligatory upon the ship owner at common law. The Supreme Court held that it was; that a seaworthy ship was one that could carry its cargo safely to destination, and that inasmuch as fresh meat could not be transported without providing refrigeration, it was incumbent at common law upon the ship owner who undertook to carry fresh meat to furnish such facilities.

If the owner of a vessel who contracts to transport fresh meat must at common law provide the refrigeration facilities which are essential to the proper carriage of that commodity, all the more must a carrier by rail furnish suitable refrigerator equipment in which to transport perishable fruits which it undertakes

to carry for such distances that refrigeration is absolutely essential.

We held in the former opinion that while it was the duty of the carrier to provide the necessary refrigerator car, it might discharge this duty either by owning the car or by leasing it. It should be carefully observed, however, that the measure of responsibility under which the railroad company rests to the shipper for the sufficiency of the car is exactly the same whether it obtains the equipment by purchase or lease. Pending the performance of the service of transportation the car is to every practical intent the car of the railroad company using it. This has been often affirmed by different courts, and has been expressly decided by the Supreme Court of the United States. *Pennsylvania Railroad Company* v. *Roy,* 102 U. S. 457, 26 L. ed. 144.

Roy was a passenger upon the railroad of the plaintiff in error, and while riding in a Pullman car attached to its train was injured by the falling of an upper berth, underneath which he was sitting. The car was owned by the Pullman Palace Car Company, and was in charge of a conductor and a porter hired and controlled by that company. Upon this ground the railroad company insisted that the Pullman Company, and not it, should be held responsible to the plaintiff in damages. The Court decided that since the car had been placed by the railroad company in its train, since the railroad company had employed that car to transport this passenger over the journey for which he had paid his fare, it must be held responsible to him in the first instance, although he was receiving from the Pullman Company an additional accommodation for which he had paid the latter company. The court said in effect that the car must be regarded, for the transportation of this passenger, as the car of the Pennsylvania Company, and that the conductor and porter of the Pullman Company, so far as their acts concerned the safety of this passenger upon his journey, must be esteemed the employees of the Pennsylvania Company.

This case is full authority for the proposition that when the Pere Marquette Railroad Company leases of the Armour Car Lines Company a car to be used in the transportation of this

fruit, that car becomes the car of the Pere Marquette Company to exactly the same intent as though it were the property of that company by purchase.

We think also that the duty of the railroad company extends to the icing of this car. The appliance which is essential to the transportation of this fruit for considerable distances is not a vehicle of peculiar construction, but a temperature artificially cooled. The car and the ice are simply a means to this end. It is just as essential to provide the ice as it is to furnish the car. At the present day the railroads of the United States, as a rule, are in condition to furnish this ice without inconvenience, and do habitually furnish it. The ice would in the instance before us, in fact be taken from the same ice houses in most cases,whether supplied by the railroad company or by the Car Lines Company. To hold that the shipper must furnish his own ice would be of necessity to throw the handling of commodities requiring refrigeration into the hands of large shippers who could provide those facilities, and to entirely prohibit the shipment of such commodities for long distances by small shippers. Without intending to suggest that there may not be instances where the carrier by rail may, with propriety, require the shipper to exercise a certain amount of care over the property while in transit, or that this might not properly at times extend to the cooling or the warming of a car, we are clearly of the opinion that in the present state of the art, so to speak, in view of the extent to which refrigeration now enters into transportation by rail, the carrier offering its services to the public for the performance of transportation requiring refrigeration should furnish both the car and the ice. Public policy demands this, and there is no sufficient reason either of justice or of convenience on the part of the carrier for denying it.

Clearly this must be so under the exclusive contracts with the Armour Car Lines Company disclosed by this investigation. As was pointed out in the former opinion, a refrigerator car is worthless without ice. Manifestly the railroad company must either furnish ice itself or suffer the shipper to provide his own ice. Under these contracts the shipper has no right to provide ice. He must of necessity accept that provided by the Car

Lines Company if he uses the car itself. But the Car Lines Company in this matter is the railroad company; in effect the railroad company furnishes the car and the ice, and is, therefore, responsible to the shipper for the manner in which that service is discharged. It collects from the shipper compensation for the service, and the mere fact that it pays over the amount collected to the Car Lines Company cannot affect its obligation to the shipper in this respect.

So far as this question has come before the courts, judicial decision apparently confirms the view we have taken. Thus, in *New York, P. & N. R. R. Co.* v. *Cromwell,* 98 Va. 227, 49 L. R. A. 362, 81 Am. St. Rep. 722, 35 S. E. 444, 17 Am. & Eng. R. Cas. N. S. 328, the plaintiff was a shipper of strawberries which were transported by the defendant in refrigerator cars. These cars were in fact furnished by the California Fruit Transportation Company under an arrangement with the railroad company that it would supply the necessary cars and keep them iced, in consideration of a certain sum which was to be collected by the railroad company of the shipper and passed over to the Transportation Company. The strawberries of the plaintiff were injured owing to improper icing of the car. The Virginia Court held that when the railroad company put this car into its train for the purpose of transporting the fruit of the plaintiff to market, it thereby made the car its own and assumed the burden of keeping it properly refrigerated, and that it must answer in damages for failure in that respect.

In *Mathis* v. *Southern Railway Company,* 65 S. C. 271, 61 L. R. A. 824, 43 S. E. 684, 30 Am. & Eng. R. Cas. N. S. 825, the plaintiff was a shipper of melons which could only be sent by freight in cars under refrigeration. He notified the railroad company that he desired to make a certain shipment upon a certain date. Suitable cars were not furnished, and in consequence he shipped his melons by express and brought suit to recover the difference between the cost of shipment by express and what it would have been by freight. It would appear from the somewhat meager report of the case that here again some car line company was under contract with the railroad company to furnish the necessary refrigerator cars for the shipment of these

melons. The railroad company apparently undertook to claim that it was a common carrier of melons only to the extent that it undertook to haul cars furnished by the shipper and iced at his risk. The South Carolina Court held, however, that if the Southern Railway Company offered itself to the public as a carrier of melons from the station of the plaintiff to the destination which he desired to reach, it must assume the burden of furnishing the necessary equipment and the necessary refrigeration; that it could not excuse itself by showing the failure upon the part of some car line company to fulfil its contract to furnish such cars, but must make good to the shipper the damages which he had sustained in consequence of its neglect to provide suitable equipment.

But we are told that the furnishing of this ice, upon whomever that duty may rest, is a local service which is merely incidental to interstate transportation, and over which this Commission has, and can have, no jurisdiction, and we have been referred to various cases in which it has been held that services like the feeding of livestock in transit, the maintenance of stockyards at which interstate shipments are unloaded and cared for, the business of selling livestock which has been brought to the market of sale from various interstate points of origin, are local in their nature and not a part of interstate commerce.

The fundamental distinction between these cases and the one before us is this: The icing is not a mere incident to the transportation service, but is a part of that service itself. Properly speaking, it is not ice but refrigeration, which the carrier furnishes, and that refrigeration must accompany the shipment during every moment of its journey. This was the idea developed by the court in *The Southwark, supra,* and there is no practical distinction between the transportation of fresh meat by water and the carriage of fresh fruit by rail. We think that when a railroad company holds itself out as a carrier of a commodity which can only move under refrigeration, its duty extends ordinarily to the furnishing of that refrigeration. Certainly in the case before us, where the railroad company insists that the ice shall be supplied only by the party whom it appoints, where it collects from the shipper and passes over to this party

the compensation for that service, the railroad company must stand responsible for the refrigeration, as for any other part of the transportation.

If now, the furnishing of refrigeration is incumbent upon the carrier, and is a part of the interstate transportation, then the charge for that service stands like any other charge for such transportation. It should be just; it should be nondiscriminative, and it should be published and maintained. We have already pointed out that every consideration which requires that other freight charges should be subject to public supervision applies with equal force to the refrigeration charge. We hold that it is the duty of the carrier to publish, file with the Commission, and observe its icing charges, and that we have the same jurisdiction to inquire into the justice and reasonableness of such charges as of any other charge for the transportation of passengers or property.

There are at least three methods which may be adopted by the carrier in imposing such charges. It may charge for the ice actually used at so much per ton; it may charge for the service of refrigeration at so much per car, whatever the quantity of ice consumed may be; or it may charge a rate by the hundred pounds when property moves under refrigeration. All these different systems have their advantages and disadvantages. Some witnesses were in favor of one system, some of another. It is not within the province of this Commission to prescribe the method which shall be adopted, so long as the price charged the shipper is fair.

The Michigan Central Railroad Company has purchased and owns the necessary refrigerator equipment, and will charge during the coming season $2.50 per ton for the ice actually consumed. We have found that this is a reasonable price, and that company should, therefore, be dismissed from this proceeding.

The Pere Marquette Company is under contract with the Armour Car Lines Company for the exclusive use of the cars of the latter company until the close of the present shipping season. The Commission is in receipt of a letter from the President of the Pere Marquette stating that for the season of 1906 that company will procure by purchase or lease its own

equipment, and will furnish ice for $2.50 per ton, that being the same arrangement which we have approved in case of the Michigan Central Company. It has been already stated that the Armour Car Lines Company has reduced its icing charges for the coming season from Michigan points from 15 to 30 per cent. Under these circumstances what course should the Commission take as to making and attempting to enforce some order?

This is a general investigation undertaken by the Commission upon its own motion, and we should adopt such a course as will on the whole best subserve the public interest. In determining what that shall be we must keep in mind, among other things, the conduct and situation of the carrier. The testimony shows that the development of this fruit business in recent years has been rapid. When in 1902 the Pere Marquette Company first entered into this contract with the Car Lines Company, it was confronted with the necessity of providing at least 1,500 refrigerator cars to move the fruit crop from points upon its line in Michigan. To purchase that equipment would have cost approximately two millions of dollars, and unless it could have been used elsewhere when not needed by the Pere Marquette, or have been put to other uses by that company, it would only have been in service two months out of the twelve. Assuming that the financial condition of the company would at that time have permitted this outlay, it certainly was a matter for grave consideration whether such an expenditure would be wise. It could probably have obtained an adequate supply of cars by lease from no other source than the Armour Company. When, therefore, it concluded in 1902, and again in 1903, this exclusive contract with the Armour Car Lines, under which that company was allowed to impose refrigeration charges which, while exorbitant in our opinion, were not greatly in excess of those imposed by the same company in other parts of the United States, we cannot say that the Pere Marquette Railroad Company acted in bad faith, or that it did not do what under all the circumstances was fairly in the interest of itself and the fruit shipping public. Today the financial condition of that company is stronger, and it proposes to acquire the necessary equipment upon the expiration of its present contract. While these facts

cannot excuse the Pere Marquette from failure to discharge its legal duty, they may properly be considered by us in disposing of this matter.

The party most vitally affected is the fruit grower. If the fruit crop of Michigan, which is now ripening, is to be marketed on favorable terms an adequate supply of refrigerator cars must be provided with adequate refrigeration service. The price charged for that service should be reasonable, but the thing which the grower must have is the service. We were convinced from the testimony produced upon the former hearing that the service of the Armour Car Lines, notwithstanding its exorbitant charges, was probably better for the fruit growers of the State of Michigan, considered as a whole, than the old system with its inadequate and uncertain supply of cars at all non-competitive points.

This Commission has no power to fix for the future the amount of these icing charges. It might order the carrier to cease and desist from the maintenance of the present charges, and recommend that those charges which have been found to be reasonable be put in effect. If the Pere Marquette Company were to comply with this order and recommendation by retaining the present Armour service and making good to the Car Lines Company the difference between its charges to the shipper and the charges exacted by that company, no evil effects would result to the grower and the loss would perhaps rest where, in strict contemplation of law, it should.

There is little probability, however, that this would be done. It was said that the Car Lines Company had offered to cancel its present contract. If the Pere Marquette Company were to accept that proposal and were to attempt to supply cars from other sources with which to move the prospective large fruit crop along its line, it is to be feared that the result would be disastrous to the fruit grower. If no attempt were made by the Pere Marquette to comply with such an order, the result would be litigation, which might postpone, and in the end defeat, the carrying out of the announced intention of that company to supply its own cars after the present season.

Considerations of this sort prevented us from making an or-

der at the beginning of the shipping season one year ago. We felt then that as a practical matter more was to be gained from the voluntary action of the railways interested than from any legal proceedings which this Commission could institute. As a result the Michigan Central Company has already brought itself into line with what we deem reasonable. The rates paid by the shipper upon the Pere Marquette are to be materially reduced during the coming season, without any impairment of the service, and, after the present season, that company will also adopt the policy which we have approved. Under these circumstances, it has, on the whole, seemed best not to make an order at the present time.

It must be carefully noted, however, that our failure to take affirmative action is not intended, if by any possibility it could have that result, to affect the legal rights of the individual shipper. If the Pere Marquette Railroad Company exacts more than a reasonable charge for this service, the party paying it is not precluded by our present action from taking steps in the proper forum to recover the overpayment.

No. 800.

WILLIAM W. WYLIE

v.

NORTHERN PACIFIC RAILWAY COMPANY, YELLOWSTONE NATIONAL PARK TRANSPORTATION COMPANY, AND YELLOWSTONE PARK ASSOCIATION.

SHAW & POWELL, Interveners.

Decided June 23, 1905.

The defendant railway company publishes rates entitling passengers to transportation over its line from St. Paul, Minn., and other points, including eastern cities, to Gardiner, Mont., and return, via Gardiner through the Yellowstone Park, a Government reservation, by stages of the defendant transportation company and return, and also, if desired, to accommodations at hotels in the Park conducted by the defendant association. Complainant also operates a stage line through the Yellowstone Park and has established permanent camps where hotel accommodations are furnished. Licensed camping parties are conducted through the Park by the interveners. Tickets issued by the defendant railroad company providing both railroad and stage transportation, and those also including hotel accommodations, are coupon tickets, covering the service by rail, by stage, and at the hotels, and the rates charged therefor are divided between the railway company and the stage company, or between the railway company, the stage company and the hotel company, as the case may be, in such manner that the railway company receives for its rail service less than its established rate to Gardiner and return. The joint rate and ticketing arrangement is solely between the railway company and the other defendants. The railway company admittedly controls the policy and operations of the other defendants. Excellent facilities for touring the Park are furnished by complainant. ***Held:***

1. That the defendant railway company, stage transportation company, and hotel association, are not competent in law to form through routes and establish joint rates as provided in section 6 of the Act

to regulate commerce, and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under that Act.

2. That, upon the facts in this case, the charging of a given sum for rail transportation to Gardiner and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accommodations therein, the service performed by the railway company being the same in each case, constitutes unlawful discrimination.

3. That the arrangement between defendants under which the through tickets are issued and sold and the proceeds divided, and the joint operations of defendants as actually carried on, constitute and effect an undue and unreasonable preference and advantage to the transportation company and hotel association, and subject complainant and others in like situation, as well as passengers traveling to and from Yellowstone Park, to undue and unreasonable prejudice and disadvantage; and while it is not decided that a carrier subject to the Act may not in some cases provide for transportation beyond its own line by stage or other similar conveyance, the facts shown in this case establish a discrimination forbidden by law.

4. That it is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner and elsewhere to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein.

George H. Lamar for complainant.
A. B. Browne and *C. W. Bunn* for defendants.

Report and Opinion of the Commission.

Knapp, *Chairman:*

The complaint in this case alleges unlawful discrimination by the defendant railway company, in which the other defendants participate, in the matter of passenger rates and tickets to and from the Yellowstone National Park. The facts deemed material are found as follows:

The Northern Pacific Railway Company is an interstate carrier by rail, its main line extending from Superior, Wisconsin, and St. Paul, Minnesota, to Portland, Oregon. From Living-

ston, Montana, on the main line, a branch extends southerly about 55 miles to Gardiner, Montana, which is at the northern entrance of the Yellowstone National Park.

The Yellowstone National Park Transportation Company, hereinafter called the transportation company or stage line, is a corporation organized under the laws of Montana which operates a line of stage coaches and similar vehicles for passenger travel in and through the Yellowstone Park. The Yellowstone Park Association, hereinafter called the association, is a corporation organized under the laws of Minnesota which owns and conducts a number of hotels located at various points in the Yellowstone Park for the accommodation of visitors to that resort. Neither of these defendants is a common carrier engaged in the transportation of passengers or property by railroad or partly by railroad and partly by water. They were made parties to the proceeding under the provisions of the Elkins law, so called, and duly served with the complaint herein but neither of them has filed an answer.

At the hearing of the case the firm of Shaw & Powell filed a petition in support of the complaint and were allowed to intervene.

Since about 1880 the complainant has conducted a tourist business in the Yellowstone National Park which includes the transportation of passengers by stage coach and other vehicles from the terminus of the railway at Gardiner (formerly Cinnabar) to various points in the park and return. Since 1897 complainant has also provided lodging, subsistence and other accommodations for such tourist passengers at tent stations or permanent camps located at suitable places within the park. He has a hotel at Gardiner and takes tourists from that point. He appears to have built up quite a large and profitable business and to be well known by those who visit this national resort.

The trip through the park begins and ends at the terminus of the branch railway at Gardiner, and visitors are permitted by the proper authorities of the United States to make the tour of the park with their own private conveyances, by the stages of the transportation company, by the facilities which complainant furnishes, or with licensed camping parties such as are conducted by the interveners.

The defendant railway company owns substantially all of the capital stock of the Northwestern Improvement Company which is a corporation operating coal mines and other properties in connection with or for the benefit of the railway company; and the Northwestern Improvement Company owns practically one-half of the capital stock of the Yellowstone National Park Transportation company and also of the Yellowstone Park Association. The railway company admittedly controls both the transportation company and the association and directs their policy and operations.

The Yellowstone National Park belongs to the United States and by an Act of Congress approved March 1, 1872, was "dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people." It extends about 65 miles east and west and about 60 miles north and south, and is a region of remarkable scenic interest. A road has been constructed through the park of about 150 miles in length and the ordinary tour occupies five days and upwards, the hotels of the association being located at convenient points for the journey.

The number of persons visiting the park during the season of 1904 was nearly 14,000, of whom probably 10,000 or more came by the northern entrance and over the branch line of the defendant railway which now terminates at Gardiner as above stated. The season extends from the first of June to the last of September.

The Mammoth Hot Springs are situated within the park about five miles from Gardiner and one of the hotels of the association is located at that point, but neither the complainant nor the interveners receive their patrons at that place.

The Yellowstone National Park is a distinctive attraction of the Northern Pacific Railway as a passenger route and is made a prominent feature in its advertising matter and other efforts to secure passenger travel. Its direct revenue from this source is large and the indirect advantage of undoubted value. On this account large investments have been made, in fact if not in form, by the defendant railway and by its predecessor, the Northern Pacific Railroad Company, in the hotels located in the park and in the stage line maintained by the transportation com-

pany, although the present and all prior leases to the transportation company from the Government provide that "no officer, director or stockholder, in the Northern Pacific Railroad Company, or any other railway company, or transportation company engaged in carrying passengers to or selling tickets over its lines or branches thereof to the Yellowstone National Park, or the employees or agents of any such corporations, shall be admitted to any share or part of this agreement or derive either directly or indirectly any pecuniary benefit to arise therefrom." These investments are represented at the present time by the stock of the transportation company and association owned by the railway company as aforesaid and by large loans to the association. The desire to protect this interest and the benefits resulting from travel to the park are the reasons assigned by the defendant railway for the ticket arrangements about to be stated which constitute the cause of complaint in this proceeding. The business of conveying passengers by stage as carried on by the transportation company appears to be remunerative but the hotel business of the association is said to be conducted at a loss.

During the season of 1903, and perhaps in previous years, the defendant railway issued and sold at various places coupon tickets, similar in form to those hereinafter described, covering railway fare to and from the terminus of its branch line and stage fare both ways from that point to the Mammoth Hot Springs Hotel, where the transportation company and the association were represented by agents but where, as it appears, the complainant was not allowed to solicit patronage. Some of these tickets provided, as we understand, for stage transportation beyond the Mammoth Hot Springs and through the park, with or without hotel privileges as the passenger might elect. The effect of this arrangement, and its purpose in part at least, was to induce tourists when starting for a trip to the park to procure from the railway transportation as far as the Mammoth Hot Springs Hotel, if not farther, and thus deprive them as a practical matter of the opportunity of going through the park by other means than those provided by the transportation company, since complainant and other competitors were virtually able to offer

their services only at the railway terminus and to passengers not provided with tickets beyond that point.

Without going further into the relations between the three defendants prior to 1904, it is sufficient to state what occurred, during the tourist season of that year. The same arrangements are in force for the present season and have been extended, as was stated at the hearing, to other travel from points on the Pacific Coast.

By circular of the defendant railway, No. 162, 1904, I. C. C. No. 570, dated May 20, 1904, tourist or excursion rates for passengers are named for the park season from June 1 to September 30, 1904. A folder of the railway company printed under date of November 1, 1904, shows the same tickets, and it is admitted by defendants that such tickets are intended to be sold during the present season. These tickets are in coupon form similar to those used by two or more connecting railroads. They provide in each case for a railroad journey to Gardiner and return and for other service by the transportation company and the association as hereinafter explained.

These tickets may be divided into two classes, one for travel beginning nominally at Livingston and the other for travel from the eastern terminals of the Northern Pacific and more distant points.

Of the first class there appear to be four kinds of tickets, sold at \$5.00, \$7.00, \$28.00, and \$49.50, respectively. The \$5.00 ticket includes railroad fare to Gardiner and return and stage transportation from Gardiner to Mammoth Hot Springs and return. The \$7.00 ticket is the same with the addition of two meals at the Mammoth Hot Springs Hotel. The \$28.00 ticket provides for railway fare to Gardiner and return and for stage transportation through the park by the stages of the transportation company. The \$49.50 ticket includes the same with hotel accommodations at the hotels of the association for 5½ days. On all tickets of this class the Northern Pacific receives \$3.00 as its share of the sum paid by the passenger. The round trip railroad fare from Livingston to Gardiner and return is \$3.30.

Of the second class there are also four kinds of tickets, sold at \$45.00, \$47.50, \$55.00, and \$75.00, respectively. The

$45.00 ticket simply covers railroad transportation, without any other service or accommodation, from St. Paul, Minneapolis, Duluth or the Superiors to Gardiner and return. The $47.50 ticket is the same with stage transportation added from Gardiner to Mammoth Hot Springs and return. The $55.00 ticket is the same with stage transportation added from Gardiner through the park and return. The $75.00 ticket is the same with stage transportation and hotel accommodations for the tour of the park.

Tickets similar in all respects to those of the second class are also sold for $10.00 more in each case covering railroad transportation over connecting lines from Chicago or St. Louis. It will thus be seen that none of the tickets of the first class and only the $45.00 ticket of the second class provide for railroad transportation to Gardiner and return and nothing more. A $55.00 ticket would cover only railroad transportation from Chicago or St. Louis to Gardiner and return.

The railway company receives and retains $45.00 on all tickets to Gardiner and return only, and we infer that it also receives $45.00 out of the $47.50 ticket which includes the stage ride to Mammoth Hot Springs and return, though the exact fact in this regard is not shown by the record. Out of the $55.00 ticket the railway company receives $30.50, the transportation company or stage line, $24.50; out of the $65.00 ticket the railway company and connecting railroads receive $40.50, the stage line, $24.50; out of the $75.00 ticket the railway company receives $28.50, the stage line $24.50 and the association hotels $22.00; out of an $85.00 ticket, from Chicago or St. Louis, the railway company and connecting roads receive $38.50, the stage line $24.50 and the hotels $22.00. In other words, the railway company gets $45.00 on a ticket to Gardiner and return, and only $30.50 on a ticket which includes stage transportation through the park, and only $28.50 on a ticket which includes the same stage transportation and entertainment at the hotels of the association. So far as the railway is concerned the service is the same in all respects whether the passenger buys one or another of the various tickets above described. In each case the transportation to Gardiner and return is performed under substan-

tially the same circumstances and conditions, and this is admitted to be so by the railway company.

On tickets of both classes which include stage transportation through the park or accommodation at the hotels, or both, as the case may be, the transportation company gets $24.50 and the association $22.00. The complainant charges $35.00 for stage transportation through the park from Gardiner and return including entertainment at the permanent camps which he maintains. The interveners charge $30.00 for their service, which includes stage transportation and entertainment at movable camps for a tour of the park.

It appears that the greater number of persons reaching the park by the defendant railway are through travelers over the main line who stop off at Livingston for an excursion through the resort. For such persons the tickets of the first class, especially the $49.50 ticket, are provided. The sale of these tickets by the railway company is not confined to Livingston but they appear to be in the hands of agents at its eastern terminals and in other cities and are offered for sale in connection with transcontinental tickets through Livingston which offer to purchasers the privilege of making the side trip from Livingston through the park. To what extent these tickets are sold at other places than Livingston was not shown, but it appears that very many travelers when they stop off at Livingston are already provided with tickets of this kind which they have purchased elsewhere.

The tickets of the first class, so far at least as they are sold at other places than Livingston and in connection with transcontinental and interstate tickets of the defendant railway, cover a portion of a single and continuous interstate journey and are subject to the provisions of the regulating statute.

The defendant railway refuses to make any arrangement with complainant for a joint service or to sell at any place coupon or other tickets for the transportation and entertainment which he provides. It is admitted that the facilities furnished by complainant for touring the park are excellent in every respect and no question is made as to his solvency or fair dealing. It is apparent that he is an active competitor of the transportation company and the association and the only inferable motive for any

discrimination against him is the desire of the defendant railway to favor the agencies which it controls and in which it is largely interested. The evidence warrants the finding, and we find the fact accordingly, that the undoubted purpose, though very likely not the only purpose of the arrangement in question between the three defendants and the sale by the railway of the various tickets above described, including the places and manner in which such tickets are sold, was to hamper and restrict the competition of complainant and others for the patronage within the park of visitors to that resort, and to secure to the transportation company and association the greater part of the business of conveying tourists through the park and entertaining them while there. That this has been the effect of the arrangement seems to be beyond reasonable question. It is found, for instance, that the number of persons entering the park by way of Gardiner during the season of 1904 showed a slight falling off as compared with the season of 1903, yet at the same time there was an increase of more than one-third in the number of persons carried by the transportation company and entertained at the association hotels, while there was a still greater decrease in the number who patronized the complainant; and no explanation of this result is suggested except the arrangement between the defendants which obviously operated to complainant's disadvantage.

It also appears that this arrangement is at variance with, and to some extent at least subversive of, the policy of the Government which has taken great pains to prevent the exercise of any exclusive privileges within the park and especially to prevent the control by defendant railway of the facilities of transportation within the territory which comprises this national resort. Upon this point various leases and other documents were introduced in evidence, but a detailed statement of facts in that regard is deemed unnecessary.

In view of these facts and the related circumstances disclosed at the hearing, we find further that the tickets issued and sold as above described give to the purchasers thereof and to the defendant transportation company and the defendant association undue and unreasonable preference and advantage and subject

other persons including the complainant and interveners to undue and unreasonable prejudice and disadvantage.

CONCLUSIONS.

We are of the opinion that the complaint in this case should be sustained, and will briefly state the conclusions reached.

We hold that the defendant railway is without authority to make traffic agreements, of the nature and effect shown in this case, either with the transportation company which provides stages for touring the park or with the association which conducts the hotels therein. The parties are not competent in law to form through routes and establish joint rates as provided in the sixth section of the Act to regulate commerce, and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under authority of that statute.

We hold further; upon the facts and circumstances shown in this case, that the charge of a given sum for rail transportation to Gardiner and return only and the acceptance of a smaller sum for the same rail transportation when the passenger goes by stage to Mammoth Hot Springs or through the park, whether with or without hotel accommodations therein, the service performed by the defendant railway being the same in each case, is an unlawful discrimination. In our judgment the Northern Pacific has no right to make one rate for passengers whose journey ends at the terminus of its branch line and a lower rate for passengers who travel beyond that point by the stages of the transportation company or who patronize the hotels of the association. The same service is concededly performed by the defendant railway in one case as in the other and the discrimination is therefore unjust and unlawful within the meaning of the second section.

Wight v. *United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822; *Cary et al.* v. *Eureka Springs R. Co.* 7 I. C. C. Rep. 286; *Hutchinson Salt Case*, 10 I. C. C. Rep. 1; *Capital City Gas Co.* v. *C. V. Ry. Co. et al.* 11 I. C. C. Rep. 104.

We also hold that the arrangement between the defendants under which the tickets described in the findings are issued and

sold and the proceeds divided, and the joint operations of the defendants as actually carried on, constitute and effect an undue and unreasonable preference and advantage to the transportation company and the association and subject the complainant and others in like situation, as well as passengers traveling to and from the Yellowstone National Park, to undue and unreasonable prejudice and disadvantage. Without deciding that a carrier subject to the Act may not in some cases provide for transportation beyond its own line by stage or other similar conveyance, we hold that the facts shown in this case establish a discrimination forbidden by law.

We likewise hold that the defendant railway should so conduct and control all its operations relating to the transportation of passengers to the park as to afford to such passengers full and equal opportunity, whether at the terminus of its line at Gardiner or elsewhere, to select the stage line or other agency which they may desire to use for touring the park, as well as the places and manner of entertainment therein.

We do not assent to the proposition that the tickets in question are excursion tickets within the contemplation of the 22d section, but even if they be so regarded they are open to the same condemnation. Under the circumstances of this case the discrimination charged would not be less unlawful in the case of excursion tickets.

It follows that the defendants should cancel and discontinue their present exclusive joint arrangements and dealings, and that the defendant railway should withdraw from sale the several coupon tickets described in the findings, establish rates for passenger travel to Gardiner only, or to Gardiner and return only, which rates shall be the same in all cases whether passengers stop at that point or proceed further by stage or otherwise, and publish and file with the Commission tariffs of such rates as required by law. The defendants and each of them should also cease and desist from all acts and practices which restrict the freedom and opportunity of tourists to select the means of conveyance and entertainment within the park, and allow free and fair competition between all persons authorized to provide facilities therefor. An order will be entered accordingly.

No. 795.

THE GLOBE-WERNICKE COMPANY

v.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; BOSTON & ALBANY RAILROAD COMPANY; BOSTON & MAINE RAILROAD COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; ERIE RAILROAD COMPANY; GRAND TRUNK RAILWAY SYSTEM; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; LEHIGH VALLEY RAILROAD COMPANY; OHIO CENTRAL LINES; PENNSYLVANIA RAILROAD COMPANY; PENNSYLVANIA COMPANY; PENNSYLVANIA LINES WEST OF PITTSBURG; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PHILADELPHIA & READING RAILWAY COMPANY AND WABASH RAILROAD COMPANY.

Decided August 10, 1905.

While there is much to support the view that sectional bookcases might properly be placed in the first class of the Official Classification. it does not appear upon the proofs presented that one-and-one-half times first class rates for all bookcases is an unlawful discrimination against the sectional variety, and the action of defendants in fixing the same classification and rates for sectional as for other bookcases does not exceed the limits of their discretion; nor is defendants' one-and-one-half

times first class rate for the transportation of sectional and other bookcases shown by the record to be unreasonable. Complaint dismissed without prejudice to further investigation.

E. P. Wilson for complainant.

Edward Colston for Baltimore & Ohio Southwestern Railroad Company.

S. O. Bayless for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Boston & Albany Railroad Company; Erie Railroad Company; Lake Shore & Michigan Southern Railway Company; and New York Central & Hudson River Railroad Company.

Ramsey, Maxwell & Ramsey for Pennsylvania Railroad Company; Pennsylvania Lines West of Pittsburg; and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

Frederick W. Stevens for Cincinnati, Hamilton & Dayton Railway Company.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman:*

The complaint in this case relates to the rates exacted by defendants for transporting "sectional" or "elastic" bookcases in less than carloads from Cincinnati, Ohio, to other points in Official Classification territory, which comprises practically all that portion of the United States north of the Ohio and Potomac rivers and east of the Mississippi river. Complainant alleges that these rates are unreasonable and unduly discriminatory, and therefore in violation of sections 1, 2, and 3 of the Act to regulate commerce, and asks for reparation on all shipments made by it over defendants' lines subsequent to January 1, 1903.

The Boston & Albany Railroad Company, in its answer, avers that since November 10, 1900, it has not been engaged in the business of transportation, and asks that as against it the complaint be dismissed. Neither the Ohio Central Lines nor the Pennsylvania Lines West of Pittsburg, as such, are engaged in the business of transportation. The Boston & Maine Railroad,

designated in the complaint as the Boston & Maine Railroad Company, did not file an answer and was not directly represented at the hearings. The other defendants each filed an answer denying the violations of law alleged in the complaint. The material facts are as follows:

Complainant is a corporation existing under the laws of Ohio. Its principal office and manufacturing plant are at Cincinnati. It is engaged in the manufacture, shipment and sale of office furniture and office specialties, including sectional or elastic bookcases. It ships the latter from Cincinnati to other points in the United States, and apparently does, also, some export business.

The railroad of the Boston & Albany Railroad Company is now and during all the time covered by the complaint has been operated by the New York Central & Hudson River Railroad Company, and the former company has not been engaged in the business of transportation since November 10, 1900.

The other defendants, except as above stated, are common carriers of interstate traffic and each of them is engaged, by its own line and in connection with other lines, in transporting complainant's bookcases from Cincinnati in the state of Ohio to points in other states in Official Classification territory and elsewhere.

The following description, given by complainant's president, applies to each of complainant's bookcases: "First, what we call a unit, which has a glass door, hung at the top, and which retires when lifted from the bottom, into the space above. This unit is so constructed that another unit fits on top of it, and fits closely. There is a strip on the top of each unit; and on the bottom of each unit is a recess into which that strip fits; and therefore the units fit together so they cannot readily move or shake apart. The joint at the end is covered by a metal strip, which gives it a finish, and also prevents shaking and slipping. The tops and bases are entirely separate units. Beginning at the bottom, with the base, units can be built up as high as may be desired, and when the desired height is reached the top is then added, and it presents a complete piece of furniture. There is also a device or locking attachment on the ends of each

unit whereby one set can be built onto the ends laterally, and fastened together and present a solid appearance. So they can be built onto indefinitely, and can be built out horizontally as well as vertically."

When presented to defendants for transportation a number of units is in each instance put into one package and protected by a crate, and each package is of such size and weight that it can be conveniently handled and packed in a car, but in no case does a single package contain all the units necessary to make a complete bookcase. The lumber used is generally oak, and while some of the packages contain glass used for doors this is so packed that it is seldom broken. During the year 1904 the total tonnage of bookcases shipped by complainant was 6,819,201 pounds, about 60% of which was shipped to points in Official Classification territory, but the total amount of damage claims presented by complainant to carriers in that territory for the period between January 1, 1904, and March 27, 1905, appears to be only $59. Descriptions of the packages usually shipped, together with values, etc., are shown in the following table:

Description of package.	Weight in pounds.	Contents in cubic feet.	Weight of Crating.	Weight of glass.	List price.
20 D X Tops	200	20	31	—	$35.00
10 D E Bases	123	24	35	—	17.50
6 D X Drawer Bases	126	15	26	—	16.50
6 D 8½ Units	122	18	24	10	16.50
6 D 10½ Units	135	21	26	13	18.00
6 D 12½ Units	143	24	27	16	19.50
6 C 11 Units	127	19	23	13	18.00
4 E 13½	120	19	25	11	18.00
4 E 13½ Comb. Units	125	22	25	11	19.00
8 D X Tops and 8 D X Bases	179	25	36	—	28.00
8 C X Tops and 8 C X Bases	169	22	38	—	28.00
6 C 9½ Units	118	16	21	10	16.50
	1,687	245	337	84	$250.50
Average	140-7/12	20-5/12	28-1/12	7	20.88
Subject to 25% discount from list price					15.66

Average weight per cubic foot about 7 pounds.
Average value per cubic foot about 77 cents.
Percentage of crating to gross weight about 20.
Percentage of Glass to gross weight about 5.

The rate exacted on complainant's bookcases in each instance by defendants is $1\frac{1}{2}$ times first class, in accordance with the Official Classification, and has been adopted and put in force on their lines by defendants and nearly, if not all, other carriers operating in that territory. The wording of the classification is as follows:

> Cases:
> Book, knocked down flat or folded flat, wrapped, crated or boxed, 2nd class.
> Book, not otherwise specified, wrapped, crated or boxed, 1-1/2 times 1st class.
> Book, and Desks, same as bookcases.

Sectional or elastic bookcases, as such, are not mentioned in this classification, but are classified and rated the same as bookcases "not otherwise specified." Complainant insists that the classification and rating should not be higher than 1st class.

In what is known as the Southern Classification, which applies in territory south of the Ohio and Potomac rivers and east of the Mississippi river, bookcases are classified as below:

> Bookcases, not otherwise specified, wrapped or crated, set-up, 1-1/2 times 1st class.
> Sectional or elastic, in tiers of not more than three sections each, boxed, 1st class.
> Sectional or elastic, thoroughly taken apart and knocked down flat, boxed 2nd class.
> Bookcases and Desks, combination, wrapped or crated, 1st class.

In the Western Classification, which applies in territory west of the Mississippi river and the Great Lakes, the classification is:

> Bookcases:
> Set-up, boxed, wrapped or crated, $1\frac{1}{2}$ times 1st class.
> Knocked down, tied in bundles, $1\frac{1}{2}$ times 1st class
> Knocked down, boxed or crated, 1st class.
> Sectional, boxed, 1st class.
> Sectional, crated, $1\frac{1}{2}$ times 1st class
> Sectional, knocked down flat, boxed 2nd class
> Bookcases and Desks, combined, boxed, wrapped or crated, $1\frac{1}{2}$ times 1st class.

The above classifications and ratings apply only on less than carload shipments.

It will be seen that by boxing its shipments complainant can obtain 1st class rates in the Southern and Western Classification territories, while bookcases other than sectional, whether boxed, crated or wrapped, are charged 1½ times 1st class. The difference in cost to complainant between boxing and crating, although not definitely shown, is small, and complainant would be willing to box its shipments to points in Official Classification territory if by doing so it could obtain first class rates. The benefit to the carriers of boxing over crating is also small.

The classification of sectional bookcases in the Western and Southern territories was formerly 1½ times first class, but as above shown has been changed to first class. The change in the Western Classification was made upon application of complainant, but whether or not this is true concerning the change in the Southern Classification does not definitely appear.

Complainant also made application at different times to the Official Classification Committee, which has charge of matters pertaining to the Official Classification, for a reduction in the classification of its bookcases, but in each instance the relief sought was denied. Complainant's manufacturing plant is located adjacent to and reached only by the B. & O. S. W. Company's tracks.

The Cincinnati Freight Committee is an association of freight representatives of carriers whose lines run north, east and west from Cincinnati to points in Official Classification territory. This committee, in a communication to the Official Classification Committee, and after investigation and examination by one of its inspectors, recommended that the classification of complainant's bookcases be changed to 1st class, but this application and another similar application subsequently made by the Freight Committee to the Central Freight Association and by it referred, without other action, to the Official Classification Committee, were acted upon by the latter unfavorably to complainant. The Central Freight Association is composed of carriers operating in that portion of Official Classification ter-

ritory bounded on the east, approximately, by a line drawn from Buffalo, N. Y., through Pittsburg, Pa., to Charleston, W. Va.

In speaking of the above recommendations the general freight agent of the B. & O. S. W. said: "We never would have recommended it if we had known it was going to affect other articles." But in referring to complainant's bookcases he also said: "They are just about entitled to a first class rating."

Sectional bookcases furnish a larger volume of traffic than any other article which is classified and rated in the Official Classification at 1½ times 1st class. There are in the United States about a dozen manufacturers of sectional bookcases, and their combined output is estimated at about 16,000,000 pounds per annum. It will be noticed that of this amount complainant's shipments constitute a little more than one-third.

Although complainant's bookcases are not shipped set-up, the different sections are, while some of the other manufacturers take the sections apart and ship them "knocked down flat." The latter are classified in the Official Classification as 2nd class, but their weight per cubic foot is between two and three times as much as the weight of complainant's shipments.

The dimensions of what is known as the standard box car are: Length 36 feet, width 8 feet and 6 inches, and height 7 feet and 6 inches; and into such a car about 12,000 pounds in weight of complainant's bookcases, as they are ordinarily presented to the carriers for transportation, can be loaded. From 60% to 75% of sectional bookcases, including those of complainant, are shipped in less than carload lots.

Complainant prepays the transportation charges on all its shipments, and sells its bookcases delivered at different points in Official Classification territory at a uniform price; that is to say, the selling price is in no way dependent upon the amount of transportation charges paid.

In Official Classification territory, shipments of sectional bookcases constitute somewhere from one-fourth to one-third of all shipments of bookcases classified in the Official Classification as 1½ times 1st class; and in the elements which should and do control in the making of classifications, as, for instance, weight per cubic foot, difficulty in handling, risk of damage or

loss, value, etc., bookcases other than sectional compare favorably with complainant's bookcases, as ordinarily shipped, except that, as a whole, the latter are somewhat more convenient to handle and furnish, possibly, a little more weight per cubic foot. The former vary considerably in size, in weight per cubic foot and in total weight, and in difficulty of handling; but the average weight per cubic foot appears to be about 6½ pounds, and while some of the bookcases can be handled as quickly and easily as complainant's shipments, others can not. Apparently, complainant's shipments are somewhat less liable to be damaged while in transit, but the item of damage is not very important.

Complainant's president named a few other freight articles which are classified in the Official Classification as first class, and said he believed they are no more entitled to that classification than complainant's bookcases are. The articles referred to are as follows: Railroad ticket cases; sewing machine cabinets; bureau glass, framed; bureaus, crated; chiffoniers; dressing cases; copying press stands, and washstands. The principal reason advanced by defendants for giving these articles the lower classification is their greater weight per cubic foot; but concerning this weight there is much conflict in the testimony. However, we think it fairly appears, when all shipments are considered, that the average weight of these articles is somewhat greater than, although not 1½ times as great as, the average weight of complainant's shipments.

At 1½ times 1st class rates complainant's bookcases are probably somewhat more remunerative to defendants than any other traffic taking the same rates. If put into 1st class these bookcases would be less desirable traffic, from the carrier's standpoint, than any one of the large majority of articles now accorded a 1st class rating, though they would pay the carriers rather better than a number of articles now carried at first class rates.

In the Official Classification, freight articles to the number of 8,000 or more are arranged in classes numbered from 1 to 6 inclusive, except that there are two subdivisions designated 15% below 2nd class and 20% below 3d class. Carriers operating in Official Classification territory are legally free to make

classifications which differ from those in the Official Classification, but in point of fact they seldom do so.

Although there is great similarity in classification in the different classification territories, many disparities exist which produce much inconvenience and often actual injury.

CONCLUSIONS.

The foregoing facts indicate that complainant's request for first class rating of sectional bookcases should be fairly considered by the carriers in Official Classification territory. This kind of bookcase has been voluntarily placed in the first class by both the Southern and the Western Classification Committees, and there is much reason to believe that it might properly receive the same treatment by the Official Classification Committee. It does not follow, however, that one and one half times first class rates for all bookcases is an unlawful discrimination against the sectional variety, which is one of the questions presented by this record, and we are not satisfied that there is such difference between the bookcase of complainant and other bookcases as to require a lower rating for the former than for the latter. To establish discrimination in rates resulting from the classification of articles of the same general character there must be preponderating proof in favor of a complaining party, and we are constrained to hold that the evidence in this case is not of that decisive character. Upon the proofs presented we are of the opinion that the sectional bookcase is not entitled to a different and lower rating than is applied to other bookcases and that the action of the carriers in fixing the same classification and rates for sectional as for other bookcases does not exceed the limits of their discretion.

Nor are we convinced upon the showing now made that one and one half times first class rates are unreasonable, within the meaning of the first section of the act, for the transportation of bookcases, including the sectional variety in Official Classification territory. We do not decide that these rates are reasonable; we merely hold that they have not been proven otherwise. In a word, the Commission will not be precluded by anything said in this report from holding, upon further investigation of the sub-

ject, that one and one half times first class rates on ordinary bookcases, whether sectional or otherwise, are excessive and unlawful. Upon the facts now appearing we are of the opinion that complainant is not entitled to a mandatory order and its petition will therefore be dismissed without prejudice.

No. 766.

T. M. KEHOE & CO.

v.

CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY.

No. 763.

T. M. KEHOE & CO.

v.

ATLANTIC COAST LINE RAILROAD COMPANY.

No. 764.

T. M. KEHOE & CO.

v.

SEABOARD AIR LINE RAILWAY.

No. 765.

T. M. KEHOE & CO.

v.

PHILADELPHIA & READING RAILWAY COMPANY.

Decided August 15, 1905.

Defendants' established charge of $1.00 per day for car demurrage held upon the record in these cases to be just and reasonable.

Benson Stimson for complainant.

Perkins Baxter for Charleston & Western Carolina Ry. Co.;

Atlantic Coast Line Railroad Co., and Seaboard Air Line Railway.

C. Heebner, for Philadelphia & Reading Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The above four cases were heard together and the question presented is identical in all. The complainants are shippers of hay from Terre Haute, Indiana, to various points in Southeastern Territory and they complain that certain demurrage charges assessed and collected upon certain of their shipments of hay are unreasonable. There is no dispute as to the essential facts. All the defendants have in force car service rules which allow 48 hours free time and assess a demurrage charge of $1.00 per day after the expiration of that time, and the demurrage charges in question were in all cases assessed properly in accordance with these rules. The only contention is as to the amount.

In all these cases the cars in which the hay was transported were owned by some railroad other than the one assessing the demurrage charge, and it was admitted that the defendant railroads paid for the use of these cars 20 cents per day. The complainants insisted that it was unreasonable for the defendants to charge them $1.00 per day when they only paid 20 cents themselves; and this was the only testimony introduced by the complainants bearing upon the reasonableness of this charge. The defendants urged that 20 cents a day was not supposed to represent the fair rental value of a car but was simply an arbitrary sum agreed upon among the various railroads for the purpose of settling car accounts with each other. Their testimony tended to show that the rental value of a car was much greater than $1.00 per day and that a demurrage charge much in excess of the sum collected might, therefore, have been properly assessed.

If the reasonableness of this demurrage charge depended upon the fair rental value of a freight car we should be disposed to hold with the complainants. The witnesses on the part of the defendants testified that a freight car would earn on the average

approximately $2.20 per day and that, therefore, this was a fair charge for the use of that car. It appeared that this sum was arrived at by taking the whole number of freight cars in the United States, multiplying that number by the 365 the number of days in a year and dividing the total gross receipts from the transportation of freight by the product. It would be difficult to conceive of anything more absurd than this method of arriving at the fair rental value of a freight car. The car does not earn $2.20 per day. The railroads of the United States may earn that amount from the transportation of freight, we have not verified the computation, and in the handling of that business a car is essential, but it is the railroad as a whole, not the freight car alone which produces these earnings. Undoubtedly there are times when a railroad could afford to pay $2.00 a day, and more, for the use of a car but that is due to some special exigency and the fact that this is the average sum which the railroad earns per freight car in service has no tendency to show the fair rental value of that car.

While 20 cents a day may not be a fair compensation for the use of a freight car, even while standing upon the track and not in service, we agree with the complainants that the fact that the railroads have fixed upon that as the amount to be paid by one line to another for the use of its cars strongly indicates that in the opinion of the railroads themselves this is a fair price. Some railroads are borrowers and others lenders of cars under the system of exchange between connecting lines which is in vogue and it is hardly credible that the lender would furnish the borrower with equipment for much less than a fair compensation. There is every reason for fixing upon some amount which is a reasonable return for the use of the car so that neither the borrower nor the lender may suffer.

Formerly the price paid for the use of foreign cars was 7.5 mills for each mile the car actually ran. This was thought too high and it was reduced to 6 mills per mile, at which figure it remained for several years. Why, if railroads had been operating upon a compensatory basis up to three years ago did they then fix upon a sum which was not supposed to be compensatory?

The rates paid private car companies for the use of their

cars lead to the same conclusion. Many freight cars have been in the past furnished by private companies which owned the cars and leased them to the railroads upon a mileage basis. For a long time the mileage allowed for the use of the ordinary freight car was 7.5 mills, the same as that paid by one railroad to another, and when the allowance between railways was reduced to 6 mills the allowance to private cars was correspondingly reduced. Upon this basis of charging most railway companies found it for their advantage to provide their own equipment in all cases where that equipment was required for continuous service. There are, however, some special instances in which the use of equipment is largely periodical, in which railway companies have continued to employ the cars of private car lines, the two most conspicuous examples being cattle cars and refrigerator cars. The Commission has recently investigated the use of these private cars. The cattle car costs about the same to build as the ordinary box car; it deteriorates somewhat more rapidly owing to the fact that the bedding rots out the floors and the bottom of the posts. There are several companies which furnish cattle cars as desired for 6 mills per mile, and the testimony shows that the average earnings of these cars is from $7 to $9 per month. Refrigerator cars are more expensive to build and maintain and the allowance made for their use is generally 7.5 mills per mile. It is our impression that the business of providing cattle cars at 6 mills per mile is not extremely profitable but it did appear that at the old rate of 7.5 mills per mile it was remunerative and that car companies did, out of their wheelage charges, pay shippers a premium for using their cars.

It would seem that 6 mills per mile produces an average return not much in excess of 20 cents per day; probably in case of the average freight car not at all in excess of that sum; and it must be remembered that while demurrage is accruing the car is not in service and is not, therefore, depreciating as rapidly as when running. If therefore the question were whether one dollar per day was a reasonable sum to charge the shipper for the use of a freight car we should hold against the defendants. But that is not the question. A railroad company is a common

carrier. Its duty is to transport freight to destination and to deliver it to the consignee. It is the duty of the consignee to receive his freight within a reasonable time and if he neglects to do so the liability of the railroad company as a common carrier ceases and it becomes simply a warehouseman. It is under no legal liability to continue to discharge the duty of a warehouseman but may insist that the consignee shall receive and remove his freight. The consequences to the railway of neglect to do this are not merely in case of carload freight the loss of the use of a car. The uncertainty arising from the fact that cars are sometimes unloaded promptly and sometimes not is embarrassing. The congestion of its terminals is often and perhaps usually a more serious matter than the loss of its cars. It would be not only much more expensive but often impossible for the railways of this country to handle their traffic at many points unless they required the prompt removal of the freight from the car. To permit one person to use the cars of a railroad company for a storehouse and to deny that privilege to another creates a discrimination between shippers which is often serious.

For these reasons and others it is not only proper but highly essential that railroad companies should make and enforce uniformly such reasonable demurrage requirements as will insure the prompt receipt by the consignee of his freight. The demurrage charge which is imposed for that purpose is not, however, based upon the fair rental value of a car; it is rather in the nature of a penalty. While it should not be sufficient in amount to work an undue hardship upon the shipper who must occasionally pay it, it should be sufficient in amount to accomplish the purpose for which it is intended. One dollar per day is the demurrage charge universally named by car service associations in all parts of this country in case of carload freight, and the same amount is generally, if not uniformly fixed by railroad commissions invested with power to make rates and regulations. Of the four cases before us the demurrage was collected in three states where $1.00 per day had been established by the State Commission, as the charge applicable to state shipments. This Commission has never passed upon the reasonableness of the $1.00 charge. It held in *Pennsylvania Miller's State Asso-*

ciation v. *Philadelphia & Reading Railroad Company,* 8 I. C. C. Rep. 531, that 48 hours was a reasonable time for unloading hay after the car had been placed and notice given to the consignee. In the *Blackman Cases,* 10 I. C. C. Rep. 352, it was held that the Southern Railway Company might apply to its interstate business the same storage rates prescribed for state business by the Georgia Commission and the South Carolina Commission and that such rates were reasonable although much higher than those charged by warehouses for the same service of storage. We could not hold upon the testimony in this case that $1.00 per day is an unreasonable charge and while a more general investigation might alter that opinion, it is our present impression that it is just and reasonable for the purpose intended.

Some reciprocal charge should perhaps be made against the railroad in case of failure upon its part to provide cars when ordered by the shipper but that subject is not under consideration and no opinion is expressed upon it.

There seems to be a certain injustice in applying this rule to the shipments of the complainants. They reside at Terre Haute, Indiana, and these demurrage charges were collected at points many miles distant from there. They accrued in all cases owing to the fact that the consignee refused to accept the hay. Evidently in such case the complainants might reasonably require some time to make a new disposition of the hay and might not be in fault in not unloading it within the 48 hours. It is difficult to see, however, how an exception can be made in their favor and the embarrassment and pecuniary loss which result must probably be regarded as an incident of the business.

We do think that some method should be provided by which shippers of hay like the complainants will be promptly notified by the carrier of the refusal of a consignee to accept and unload the shipment. It appeared that at the present time this was not done although the complainants had actual notice in all the above cases from other sources and did not, therefore, suffer loss on that account.

The complaints will be dismissed.

No. 779.

T. M. KEHOE & CO.

v.

THE EVANSVILLE & TERRE HAUTE RAILROAD COMPANY; THE LOUISVILE & NASHVILLE RAILROAD COMPANY; THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; THE GEORGIA RAILROAD; AND THE SOUTHERN RAILWAY COMPANY.

Decided August 15, 1905.

The Evansville & Terre Haute R. Co. does not make through rates with the other defendants from points in Indiana to destinations south of the Ohio River, but has established on hay a local rate of 8 cents per hundred pounds to Evansville and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination. The E. & T. R. refused to apply a proportional on shipments billed to Evansville in care of a southern line for points beyond, having discontinued a tariff providing therefor, which was effective from November 10, 1903, to July 19, 1904. The rate from Evansville by the other defendant lines is the same whether shipped locally from or through Evansville. *Held,* that it is unreasonable and unjust for the E. & T. R. to insist upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed; and that while the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom, as was actually done in 1903 and 1904. *Held,* further, that complainants are entitled to reparation on a shipment of one carload of hay carried from Johnstown, Ind., to Charleston, S. C., amounting to \$4.36 from the E. & T. R. and \$5.97 as admitted overcharge collected by the Georgia R. on the same shipment.

Benson Stimson for complainants.
Perkins Baxter and *Edwin Taylor* for defendants.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The Evansville & Terre Haute Railroad extends from Terre Haute in the State of Indiana to Evansville in the same State. At the latter point it connects with the Illinois Central Railroad, the Louisville & Nashville Railroad, the Southern Railway, and perhaps some other lines, by all of which communication is had with territories south of the Ohio and east of the Mississippi Rivers.

The complainants T. M. Kehoe and John F. Kehoe are engaged as a copartnership under the firm name of T. M. Kehoe & Company, in the business of shipping hay from various points upon the Evansville & Terre Haute into this southern territory. Such shipments are transported over the Evansville & Terre Haute Railroad to Evansville and there delivered to some connecting railroad for carriage to destination. No joint rates are published from points on the Evansville & Terre Haute Railroad to these southern destinations but the through rate is made by adding together the rate to Evansville and the rate from Evansville. The rate from Evansville is the same whether the shipment originates at Evansville or is there received by the southern carrier from some connecting line but the defendant company names a somewhat lower rate when the shipment is for a point beyond Evansville than when it is for local consumption in that city. For example, the local rate from Terre Haute to Evansville on hay is at present 8 cents per hundred pounds, while the rate on shipments for points beyond Evansville is 6½ cents per hundred pounds. It was formerly 6 cents in both cases but has been gradually advanced.

Two questions are presented by this record.

1. At the present time the defendant railroad company declines to apply the proportional rate of 6½ cents unless the shipment is billed through to some specified destination south of

Evansville and the complainants insist that this requirement is unjust and unreasonable.

2. The complainants ask reparation on account of a specific shipment upon which a rate of 8 cents was exacted while complainants insist that it should have been 6 cents.

1.

As above stated the defendant makes no joint through rate from stations upon its line to points south of the Ohio River and it has no tariffs on file in its various local depots from which rates to points south of the Ohio River can be ascertained by the shipper. It does have in its general office at Evansville such schedules and if the complainants desire to make shipment to some station in the south the station agent applies to the general office which gives instructions naming the rate from Evansville south. The station agent adds this to the 6½ cent rate and issues a bill of lading naming the through rate thus arrived at. In doing this, however, the defendant company professes to act only for the accommodation of the shipper and declines all responsibility beyond its own line at Evansville.

It is important for the complainants when shipment of a carload of hay is made to know the route by which that shipment is to go and the rate. Under the present arrangement it apparently has no responsible party to whom it can look in case of error. The defendant company declines to be held responsible for the correctness of the rate named by it. If the complainants obtain from the carrier south of the Ohio River a statement of the rate from Evansville to destination the agent of the defendant declines to accept this and to issue the bill of lading accordingly. As a result there is considerable delay and more or less friction in the handling of these shipments. As a practical example of this the following illustration was given:

Some days before the hearing the complainants desired to make shipment from a point on the defendant railroad to a given point in southern territory and for that purpose loaded two Illinois Central cars. The Evansville & Terre Haute billed these cars to destination via the Illinois Central naming a rate in the bill of lading. When the cars reached Evansville and were de-

livered to the Illinois Central it turned out that while the rate by another line to the given destination was that named in the bill of lading the rate was higher via the Illinois Central. That road declined, therefore, to receive the cars at the rate named and it also refused to allow its cars to be taken by the route over which the lower rate applied. The Evansville and Terre Haute Company declined all responsibility in the matter and the cars had been standing for several days at Evansville awaiting disposition.

What the complainants desire is to be allowed to bill their shipments of hay in care of some connecting railroad at Evansville, marked "for shipment beyond." They can then ascertain the rate from this carrier and obtain an authoritative bill of lading.

Formerly the rate on hay from these stations upon the Evansville & Terre Haute Railroad had been 6 cents whether intended for local consumption at Evansville or for through shipment. In the latter case the custom was to mark the waybill "For shipment beyond" and the car was then held in the yards of the Evansville & Terre Haute at Evansville until directions were issued by the shipper naming the road to which delivery should be made. In June 1903 the local rate to Evansville was advanced from 6 to 8 cents per hundred pounds. No tariff naming the 8 cent rate was filed with the Commission, since that was regarded by the defendant as an intrastate transportation, but a tariff was filed naming a proportional rate of 6 cents and providing that this rate should only apply to shipments "consigned through to points south of the Ohio River." The complainants earnestly objected that this was an unnecessary interference with their manner of doing business and insisted that they should be allowed to bill in care of some southern line at Evansville for shipment beyond unless the defendant railroad provided at its stations from which shipment was made the tariffs from an inspection of which the through rate could be ascertained and unless the agents of the defendant were prepared to make prompt billing of these shipments. In consequence of such complaints the defendant railroad put in force November 10, 1903, a modification of the above rule providing that the 6

cent rate should apply on shipments, "destined to points south of the Ohio River and which must be consigned in care of one of the southern lines at Evansville."

This provision continued in force until July 19, 1904, when it was withdrawn and the former regulation restored. Lest it might be claimed that the car was consigned through when billed in care of a southern line for shipment beyond, it was expressly provided by this latter tariff that in such case the local rate to Evansville should apply.

The general freight agent of the defendant testified that there were two reasons for withdrawing the original privilege of billing to Evansville with notation for beyond.

First, because local shipments to Evansville might be made at the proportional rate. There are located upon the various southern lines at Evansville hay warehouses and these lines might by direction of the shipper make delivery at these various warehouses for a switching charge thereby applying the six cent rate to an Evansville shipment when it should have been 8 cents.

Second, the complainants and other shippers of hay neglected to give prompt directions for the forwarding of their cars from Evansville with the result that the yards of the defendant at Evansville became badly congested entailing much annoyance and expense.

The defendant clearly has the right to insist upon some method of handling these shipments which will avoid both these objections. It may make and in our judgment properly makes a lower rate upon the through shipment than upon the local shipment, and it may properly insist that this rate shall not be abused by applying to local shipments in fact the proportional rate. One consideration for making the lower rate in case of the through shipment is that the defendant is to no expense of delivery at Evansville. It may, therefore, rightfully insist that the shipment shall be promptly received by its connection at Evansville and may decline to make of its yards at that point a reconsignment storehouse. It is evident that under the old system the second and perhaps the first reason given by the general freight agent of the defendant company was a perfectly valid one; but he was unable to state and we are unable to see why

the practice which these complainants desire to follow and which was actually in use from November 1903 to July 1904 would not entirely protect the defendant company in both these respects. While it is true that a connection at Evansville might make a local delivery of a shipment consigned in its care for transportation beyond, so could it in the same way make local delivery if points of destination were named and there would be no more bad faith in one instance than in the other. As to the second objection, it is evident that the Evansville & Terre Haute Company would relieve itself of the shipment exactly as quickly in case it were consigned in the care of some connection as though it were billed through to a named destination.

We find that it is unreasonable and unjust under the circumstances of this case for the defendant to insist upon the billing of these shipments to destination so long certainly as it declines to assume the responsibility of this billing and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed; and we further find that it would be reasonable and just if these shipments were billed in care of the southern line at Evansville for shipment beyond as was actually done from November 10, 1903, to July 19, 1904. We think and find that this privilege was withdrawn on the latter date not because of any valid objection to its use but from personal considerations growing out of more or less friction between the general freight agent and these complainants in the transaction of their business.

2.

On July 3, 1903, the complainants desired to make shipment of a carload of hay from Johnstown, Indiana, to Charleston, South Carolina. Johnstown is a point upon the defendant railroad where shipments of hay are received but there is no railway station or station agent there, and, therefore, no facilities for billing. The general freight agent of the defendants stated that under such circumstances the billing should be made from the nearest station which in this case was not Terre Haute, but he further testified and upon his testimony we find, that at the time of this shipment the agent of the defendant at

Terre Haute had authority to bill shipments of hay from this point.

The complainants made out a bill of lading or shipping receipt for the shipment of this hay from Johnstown to Charleston. The proportional rate from Johnstown to Evansville was 6 cents and the rate from Evansville to Charleston 23 cents and the complainants named in the bill of lading a through rate of 29 cents. This bill of lading the agent of the defendants at Terre Haute declined to sign. He did, however, sign a local bill from Johnstown to Evansville in which a rate of 6 cents was named and by which the car was consigned in care of Louisville & Nashville Railroad. When this carload arrived at Evansville and was delivered to the Louisville & Nashville at that point the rate was raised from 6 cents to 8 cents although the Louisville & Nashville notified the defendant that the shipment was for Charleston. This increased the through rate from 29 to 31 cents. The delivering carrier collected 31 cents per hundred pounds which was paid in settlement by the complainants, and the defendant railroad received as its proportion 8 cents. The complainants made claim on the defendant for the repayment of two cents per hundred pounds upon this shipment which was declined. The shipment weighed 21,820 and the claimed overcharge would amount to $4.36.

The defendant denied that the complainants ever presented any through bill of lading for signature and stated that had such a bill of lading been presented it would have been signed by the agent. In support of this claim the person who was then acting as station agent at Terre Haute was introduced by the defendant as a witness but he had no recollection of the transaction whatever except in so far as he identified his signature to the bill of lading which was issued. Both the complainants testified the one to the making out of a through bill and the other to presenting it for signature and the refusal of the agent to sign. We find the facts as above stated.

The Georgia Railroad, a defendant and one of the southern lines which handled this shipment, states in its answer that it inadvertently collected $5.97 more than the published tariff, which it is willing to refund.

CONCLUSIONS.

1. It has been found that the requirement that shipments should be billed through to destination is under the circumstances of this case unjust and unreasonable and the defendant should be ordered to cease and desist from insisting upon such requirement.

It is suggested that inasmuch as this proportional rate is a concession from the local rate the defendant may impose as a condition of enjoying that rate whatever conditions it may see fit. To this we do not assent. Without inquiring whether this Commission would have jurisdiction if the defendant only published a local rate to Evansville, or whether the defendant can withdraw its present interstate rate, it seems clear that when it publishes this proportional rate, made applicable by its terms only to interstate shipments, that rate is subject to the jurisdiction of the Act to regulate commerce and that the Commission may determine whether the rate itself or the terms and conditions upon which the rate is applied are just and reasonable.

2. The complainants are entitled to an order against the Evansville & Terre Haute Railroad Company for the repayment of the sum of $4.36. They applied to the agent of the defendant company having authority to act, stated to him the destination of the shipment and asked him for a through bill of lading to that point. Instead of a through bill the agent issued a local bill which named a rate of 6 cents and indicated that the car was to be carried beyond. The complainants did all they could do to secure the rate of 6 cents and the exaction of a higher rate was unwarranted.

The Georgia Railroad should be ordered to pay the complainant the sum of $5.97 which it by mistake has improperly collected and retained. The other defendants should be dismissed.

No. 749.

IN THE MATTER OF FREIGHT RATES BETWEEN MEMPHIS AND POINTS IN ARKANSAS.

Decided August 15, 1905.

The Memphis Freight Bureau and the St. Louis Southwestern Railway Company submitted certain matters to the Commission for determination and such correction of rates involved as might be required under the Act to regulate commerce. Rulings of the Commission thereon are:

1. Defendant's rates on cotton from local points in Arkansas to Memphis are not required to be reduced, but it is directed that the relation of cotton rates from such points to Memphis and St. Louis be made more uniform from particular stations.
2. Defendant's rates from local points in Arkansas to Memphis on traffic other than cotton are not disturbed, but defendant is recommended to consider revision of its rates to Memphis on live stock and cotton seed.
3. Defendant's rates from Memphis to points in Arkansas, as compared with the Arkansas Commission mileage rates, including those applying from Little Rock and Pine Bluff, Ark., are held to constitute a discrimination for which it is doubtful whether defendant can be held responsible, and in that respect complainant's contention is not sustained; but it is found and decided that defendant's rates from Memphis to local points in Arkansas are in many instances unreasonably high and should be reduced. Defendant required to submit within 30 days a revised schedule and put the same in force as provided by law. Case retained for such further order as may become necessary.

T. B. Turley and *T. K. Riddick* for Memphis Freight Bureau.

E. E. Wright, S. H. West and *D. W. Houston* for St. Louis Southwestern Railway Company.

Morris M. Cohn for Freight Bureau of Little Rock.

Report and Opinion of the Commission.

Knapp, *Chairman:*

This inquiry is based upon a written agreement between the Memphis Freight Bureau, hereinafter called the complainant, and the St. Louis Southwestern Railway Company, hereinafter called the defendant, which was duly filed with the Commission and reads as follows:

"It is hereby agreed between the Memphis Freight Bureau, acting through Jas. S. Davant, its Commissioner, and the St. Louis Southwestern Railway Company, acting through H. E. Farrell, its Freight Traffic Manager, that the question as to whether the rates on traffic from Memphis to local points in Arkansas on the lines of the St. Louis Southwestern Railway Company, and from such points on said lines to Memphis, as are shown on the statement of the same marked Exhibit "A," consisting of all rates between Memphis, Little Rock, Pine Bluff and the points referred to, and hereto attached and made a part hereof, are unjustly discriminatory under the provisions of the Act to regulate commerce, and amendments thereto, as to the city of Memphis and its people, and whether they involve, under all existing circumstances and conditions, an undue or unreasonable preference or advantage to other localities in said State of Arkansas, as against said city of Memphis, and also whether the rates on cotton from local points in Arkansas on said lines to Memphis are unjustly discriminatory, and whether they involve, under all circumstances and conditions, an undue or unreasonable preference or advantage to other localities as against said city of Memphis, a statement of said cotton rates to be agreed upon and marked Exhibit "B" and made a part hereof, shall be submitted to the Interstate Commerce Commission, at the meeting of said Commission to be held in Memphis in May, 1904.

"The parties hereto shall have the right, at said hearing, to offer all evidence pertinent to the questions in controversy, as above stated, and may be represented by counsel.

"If the Commission shall decide that said rates as specified in

Exhibit "A," or said rates as specified in Exhibit "B," heretofore existing are not unjustly discriminatory and do not involve an undue or unreasonable preference or advantage to other localities hereinbefore referred to, as against the city of Memphis, the Memphis Freight Bureau shall acquiesce in the same and raise no further question in regard thereto.

"If the Commission shall decide that said rates are in any respect unjustly discriminatory, and do in fact involve an undue or unreasonable preference or advantage to other localities hereinbefore referred to, as against the city of Memphis, the said Commission shall indicate what rates would be fair, just, reasonable and not unjustly discriminatory, and not involving undue preference or advantage, as aforesaid, and thereupon, the St. Louis Southwestern Railway Company shall and will put into effect at once, without controversy, any rates thus indicated.

"However, in case changes are afterwards made in the rates to and from the points above referred to, on which the Memphis rates are predicated by the Interstate Commerce Commission, which changes will disturb the conditions fixed by the Commission, then the rates between Memphis and said points shall thereupon be changed so as to preserve the adjustment which is established by the rates indicated by said Commission.

"The St. Louis Southwestern Railway Company will, upon the signing of this agreement, with the consent of the St. Louis, Iron Mountain and Southern Railway Company, and the Iron Mountain Railroad Company of Memphis, renew the arrangement with said companies whereby Memphis business of the St. Louis Southwestern Railway Company has heretofore been transacted, and until the determination of the question by the Interstate Commerce Commission, the St. Louis Southwestern Railway Company shall charge the same rates as those heretofore in effect, and in so doing, shall not be held to prejudice itself, the St. Louis, Iron Mountain & Southern Railway Company, or the Iron Mountain Railroad Company of Memphis, in any way whatsoever.

"Pending the decision of the Interstate Commerce Commission on this question, no action shall be taken by, or in behalf of, the Memphis Freight Bureau, on questions involved in this

agreement, which would in any way prejudice or injuriously affect the interests of the St. Louis Southwestern Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, or the Iron Mountain Railroad Company of Memphis.

"If the Interstate Commerce Commission should, for any reason, refuse to hear and decide the questions herein agreed to be submitted to it for decision, at its term to be held in Memphis in May, 1904, the parties hereto shall thereupon be remitted to their legal rights as they now exist, and to such remedies for the enforcement of the same as either of them may deem proper in the premises, without any prejudices by reason of the making of this agreement. In such event, the parties shall have the same rights and privileges as if this agreement had not been made, and the St. Louis Southwestern Railway Company shall be permitted to again withdraw from Memphis business so far as to restore the status of the parties as it existed at the date of this agreement. And the Memphis Freight Bureau shall not avail itself of any rights or advantages growing out of the resumption by the said St. Louis Southwestern Railway Company of business relations with Memphis, which at this time have been abandoned, but such rights shall exist only as applicable to the conditions at this time existing.

"It is understood and agreed between the parties that the determination of the questions in dispute between said Memphis Freight Bureau and the St. Louis Southwestern Railway Company as hereinbefore provided for, and which, under this agreement, are to be submitted for decision to the Interstate Commerce Commission, shall constitute a full and satisfactory settlement and determination of all questions in dispute between the parties hereto, in reference to these rates, and nothing herein contained shall be so construed as to authorize the submission to, or the decision by, said Commission of any questions except those in this agreement specifically designated.

"It is distinctly understood between the parties that the purpose of this agreement is to submit the questions in controversy as hereinbefore specified to said Commission, to the end that the same may be thus, by arbitration, disposed of without technicalities or formalities, and to the end that the pending

dispute between the parties will be finally settled, and cordial and friendly relations may be restored between them.

"While it is the intention of the St. Louis Southwestern Railway Company in good faith to resume and continue Memphis business, yet conditions may arise in the future of such a character as to require said St. Louis Southwestern Railway Company, in the judgment of its proper officers, to abandon said business. Accordingly, it is distinctly understood and agreed between the parties hereto that nothing herein contained shall be so construed as to require said St. Louis Southwestern Railway Company to continue to do business in and out of Memphis any longer than it may deem to be necessary or desirable.

"It is further agreed that both the parties hereto shall join in a mutual application to the Interstate Commerce Commission to hear and determine, as a matter of arbitration, the questions in dispute as set forth above, at its term to be held in Memphis in May, 1904.

"This agreement not to be effective until signed by both parties hereto.

"MEMPHIS FREIGHT BUREAU,
By Jas. S. Davant,
Commissioner.

"ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
By H. E. Farrell,
Freight Traffic Manager.

Dated April 16th, 1904."

The term "local points" in this agreement applies to such places in Arkansas as are served only by the defendant company and does not include competitive points, so-called, which are served by two or more lines of railway.

In Exhibit "A," which will be more fully referred to hereafter, 41 points in Arkansas are named.

Destination points named in Exhibit "B" are: Memphis, Tenn.; Cairo and East St. Louis, Ill.; St. Louis, Mo., and Boston, Mass.

It will thus be seen that the questions for determination are as follows: (1) Whether, under the provisions of the Act to

regulate commerce, rates enforced by defendant between Memphis and local points in Arkansas, compared with its rates between the same local points and Little Rock and Pine Bluff, Ark., subject Memphis to unjust discrimination, or give undue or unreasonable preference or advantage to other localities in Arkansas as against Memphis; and (2) Whether, under the provisions of the Act, rates enforced by defendant on cotton from local points in Arkansas to Memphis, compared with its rates on cotton from the same local points to destinations other than Memphis, mentioned in the last preceding paragraph, subject Memphis to unjust discrimination, or give undue or unreasonable preference or advantage to other localities as against Memphis.

The Memphis Freight Bureau is a corporation organized and existing for the purpose, among other things, of guarding and promoting the transportation interests of merchants, manufacturers, and other residents, of Memphis, Tenn.

The defendant company operates a line of railway extending from Bird's Point, Mo., on the west bank of the Mississippi River, in a southwesterly direction through the states of Missouri and Arkansas to Texarkana, Tex. a distance of 419 miles. It also operates four important branch lines running from its main line as follows: One from Malden, Mo., to Gray's Point, Mo., on the west bank of the Mississippi River, a distance of 68 miles, called the Gray's Point branch; another from Stuttgart, Ark., to Gillett, Ark., a distance of 35 miles, called the Stuttgart branch; another from Altheimer, Ark., to Little Rock, Ark., a distance of 44 miles, called the Little Rock branch; and another from Lewisville, Ark., to Shreveport, La., a distance of 61 miles, called the Shreveport Branch.

Defendant makes connections as follows: With Cairo from Bird's Point by ferry across the Mississippi River; with Thebes and Gale, Ill., from Gray's Point by ferry across the Mississippi River; with East St. Louis from Thebes over the St. Louis, Iron Mountain & Southern Railway, by virtue of a trackage arrangement; and with St. Louis from East St. Louis by bridge across the Mississippi River. The distance from St. Louis to Thebes is 129 miles. Defendant also has an agreement with the St. Louis, Iron Mountain & Southern Railway Company

which enables it to connect with Memphis. For this purpose it uses the St. L., I. M. & S. from Fair Oaks, Ark., to Bridge Junction, Ark., a point on the west bank of the Mississippi River, a bridge across the river, and the Iron Mountain Railroad from the east bank to defendant's depot in Memphis. It runs its own passenger trains over this connection, but its freight traffic is hauled by the St. L., I. M. & S. for a charge of 3 cents per 100 pounds, in addition to a bridge toll which varies according to the class of traffic hauled but averages about 2 cents per 100 pounds. Defendant also pays the expense of maintaining a freight station in Memphis. The distance from Fair Oaks to Memphis is 60 miles. The Iron Mountain road is operated by the St. L., I. M. & S., has an aggregate mileage of 1.7, and is located entirely in the city of Memphis. At the option of either party thereto the agreement under which defendant connects with Memphis from Fair Oaks may be abrogated.

Memphis is situated on the east bank of the Mississippi River and has good facilities for transportation by water, particularly with New Orleans by the Mississippi River and with Pittsburg by the Mississippi and Ohio Rivers. It is directly served also by 10 or 11 different lines of railway, 3 of which enter the city from the west side of the river: The St. Louis, Iron Mountain & Southern, the Kansas City, Fort Scott & Memphis, a part of the Frisco System, from Bridge Junction, and the Choctaw, Oklahoma & Gulf, a part of the Rock Island System, from a point called Bridge siding. On the west side of the river in Arkansas the C., O. & G. has a station called Hopefield, and the K. C., F. S. & M. a station called West Memphis.

The C., O. & G. road runs from the west bank of the river in a westerly direction through Arkansas, Indian Territory and Oklahoma Territory to the east line of the Pan Handle of Texas. In connection with this road, the Rock Island System now uses terminal facilities in Memphis which were originally acquired by the Choctaw & Memphis Railroad Company under two agreements between the latter and the city of Memphis. Each of these agreements contains a paragraph which reads as follows:

"Fifth: The Railroad Company agrees that at no time during the term of this contract, will it discriminate against the city, or

its merchants or citizens, in the rates for the carriage of freight or passengers to and from the city, or between the city of Memphis or points in Arkansas or any other State or Territory, nor shall any rates be put into effect or maintained by said Railroad Company, or any other company holding under or through it, or over any part of their line, which shall be discriminatory against the city of Memphis or its merchants or citizens in the carriage of freight or passengers."

One of the agreements also contains the following paragraph:

"Ninth: It is further agreed and stipulated by the Railroad Company that its freight rates to and from Memphis shall at no time exceed its freight rates to and from Hopefield or West Memphis, Arkansas."

The K. C., F. S. & M. road runs from West Memphis and Bridge Junction in a northwesterly direction through Arkansas and Missouri to Kansas City. In connection with this road, the Frisco System now uses terminal facilities in Memphis which were originally acquired by the Springfield & Memphis Railroad Company by agreement between the latter and the Taxing District of Shelby County, Tennessee. Paragraphs 14 and 15 of this agreement read as follows:

"14. Said second party binds itself, its successors and assigns, never to discriminate in its passenger fare or freight rates or charges against the first party, or the citizens thereof, or any citizen thereof.

"15. It is distinctly understood and agreed by the parties hereto that the privileges herein granted are granted only upon the foregoing conditions, and if at any time said second party, its successors or assigns, shall make any discrimination in freight or passage (passenger) tariff against the business of the District, or its citizens, or any citizen thereof, or shall violate in any material respect any other of the foregoing conditions, this, at the option of the first party, shall *ipso facto* be a termination of this contract and privileges thereunder."

The St. L., I. M. & S. Company's Memphis Branch runs from Bridge Junction in a westerly direction through Fair Oaks to the main line at Bald Knob, Ark., a distance of 88 miles. The main line runs from St. Louis in a southwesterly direction to Texarkana; through Arkansas it runs westerly of and nearly

parallel with defendant's main line. In connection with the Iron Mountain road, the St. L., I. M. & S. now uses terminal facilities in Memphis which were originally acquired by the Iron Mountain Railroad Company through an agreement between the latter and said Taxing District. Paragraph No. 15 of the agreement reads as follows:

"15. It is further agreed that said second party will at no time during the term of this contract unequally discriminate against the first party or its citizens in its rates for the carriage of freight and passengers to and from the Taxing District."

Memphis is situated in Shelby County and it is understood that the city succeeded to and now enjoys the rights secured to said Taxing District under the agreements aforesaid.

Little Rock is situated on the south bank of the Arkansas River, is served by the Little Rock Branch of defendant's road, and is on the main line of both the C., O. & G. and the St. L., I. M. & S. In connecting with Little Rock from Argenta, Ark., defendant uses the St. L., I. M. & S. bridge across the Arkansas River. For this and the use of the latter's terminal facilities at Little Rock, including station expenses at that point, defendant pays the St. L., I. M. & S. $3 per loaded car, no charge being made for empty cars.

Pine Bluff is also situated on the south bank of the Arkansas River, 43 miles southeast of Little Rock. It is on defendant's main line, and on a branch of the St. L., I. M. & S. which runs from Little Rock to Arkansas City, Ark. It is also served by the Pine Bluff Arkansas River Railway, which runs from Rob Roy, Ark., to Reydel, Ark., a distance of about 25 miles. Although operated separately this railway is controlled by defendant through ownership of its capital stock, and its trains are run over defendant's road from Rob Roy to Pine Bluff, a distance of 7½ miles.

The Arkansas River is navigable between Little Rock and the Mississippi River, and boats ply thereon; but it is not claimed that these circumstances affect in any way the rates here in question.

The following diagram, although not entirely accurate, will illustrate fairly well the locations of the roads and points in question:

According to the U. S. Census Bureau, populations in 1900 were as follows: Memphis, 102,320, Little Rock, 38,307, and Pine Bluff 11,496. Later populations were not definitely shown but the population of Little Rock in 1904 was estimated at 62,500.

On or about May 15, 1900, under the aforesaid agreement with the St. L., I. M. & S. Company, defendant began doing business between Memphis and points in Arkansas. In connection with the St. L., I. M. & S. and the Frisco System, defendant had previously published joint rates to and from Memphis and did not make any change in those rates when it began to operate under said agreement. However, in September following it made a readjustment which included both reductions and advances.

On or about April 10, 1900, the Railroad Commission of Arkansas made a schedule of rates for transportation of property between points in that state and issued an order requiring roads operating in Arkansas to comply therewith. Generally speaking the rates named in this schedule were materially lower than those previously in force, although in some instances they were higher than rates defendant had put into effect between Little Rock and Pine Bluff and local points in Arkansas. The order, however, was complied with by all the roads above mentioned. It seems that defendant was desirous of contesting the matter, but having failed to induce other Arkansas roads to join in a contest, and having concluded that the Arkansas schedule would apply to only about 5 per cent of its business to and from points in that state, it decided to publish the rates under protest; and diagonally across the face of each tariff issued by defendant in this connection a conspicuous endorsement appears which reads as follows: "Published by St. Louis Southwestern Railway Co. under protest and the right to contest same is reserved."

In May, 1900, in pursuance of an agreement executed on February 15, 1900, between complainant, representing the city of Memphis, and the St. L., I. M. & S. Company, the latter made material reductions in its rates between Memphis and

points in Arkansas. This agreement was the result of proceedings in the Circuit Court of the United States instituted by the city of Memphis against the Iron Mountain Railroad Company, and the reductions were made for the purpose of aligning rates of the St. L., I. M. & S. to and from Memphis with that company's rates between points in Arkansas; but this pertained to rates as they existed before the promulgation of the Arkansas schedule.

It appears that after adopting the Arkansas Commission schedule the Rock Island and Frisco roads readjusted their Memphis rates to the satisfaction of complainant; but the dates of the readjustments do not appear in the record.

Generally speaking, it may be stated that rates between Memphis and points in Arkansas on the St. L., I. M. & S. are the bridge tolls higher than those for equal distances specified in the Arkansas Commission's schedule, although in a few instances they are higher than this, and in still others they are lower even than the Arkansas Commission rates. Between Memphis and points on the C., O. & G. the average is somewhat less.

But while reductions in rates brought about by the Arkansas Commission's schedule, between points in Arkansas, were followed by material reductions between Memphis and points on the St. L., I. M. & S. and the C., O. & G. roads, corresponding reductions were not made by defendant in its rates between Memphis and the local points in Arkansas referred to in the agreement of submission; and, so far as they apply to Memphis, defendant's rates are materially higher than those of the other two roads.

The record contains very little data concerning the bases used in making rates on the K. C., F. S. & M. road; but for reasons hereinafter stated complainant is not much interested in the rates applying between Memphis and points in Arkansas on that road.

On September 13, 1901, and about the time the St. L., I. M. & S. readjusted its rates to and from Memphis, on account of the publication of the Arkansas Commission's schedule, com-

plainant's commissioner wrote to defendant's assistant general freight agent as follows:

"Please let me know when your rates from Memphis will be aligned with those to C., O. & G. and St. L., I. M. & S. Ry. stations, effective on the 15th inst. We trust you will hasten this issue all possible."

Conferences were afterwards held between representatives of the parties to this proceeding, and propositions and counter propositions made, but no satisfactory result was reached. Finally, on the night of April 6, 1904, defendant, being unwilling to make the reductions in rates demanded by complainant, and fearing its failure to do so would cause the city of Memphis to bring suit against the St. L., I. M. & S., withdrew from Memphis and ceased to do business to and from that city under the aforesaid agreement with the latter company. This action was followed by an agreement between the parties hereto whereby certain questions were submitted to this Commission for determination, as above described; whereupon, defendant recommenced and has since continued doing business to and from Memphis under the rates in effect previous to said April 6.

After the order instituting this proceeding was issued the Freight Bureau of Little Rock applied for and was granted permission to intervene. Evidence on behalf of Pine Bluff was also offered and received. A hearing was held at Memphis on May 12, 1904, at which time several witnesses were examined and data of different kinds submitted; and, by agreement of the parties, many affidavits and depositions and considerable documentary evidence were afterwards filed with the Commission and made a part of the record.

In his first testimony in this case, complainant's commissioner stated that defendant's rates between Memphis and local points in Arkansas, when it made connection with Memphis in May, 1900, compared with its rates between such local points and Little Rock and Pine Bluff, were accepted by the people of Memphis as comparatively satisfactory; but he afterwards discovered that when said connection was made defendant had tariffs in effect whereby much lower rates were allowed on traffic reconsigned from Little Rock and Pine Bluff to other points in

Arkansas than were accorded generally on other shipments of the same kind of traffic between points in Arkansas on defendant's line; whereupon, he further testified as follows: "Memphis has never been able to compete successfully on the Cotton Belt Line with the jobbers of Little Rock and Pine Bluff, and these tariffs are the explanation of the fact."

Defendant's line is known as and commonly called the "Cotton Belt."

These tariffs were known as "Jobbers' Tariffs" and were issued by defendant for the purpose of giving to Little Rock and Pine Bluff in certain territory on defendant's line an advantage over jobbing centers located elsewhere. As above stated, the rates prescribed by these tariffs were much lower than rates accorded generally by defendant between points on its line in Arkansas, and they were lower in some instances than rates provided for by the Arkansas Commission schedule of April 10; but they applied only on reconsignments from Little Rock and Pine Bluff of traffic shipped to those points in the first instance over defendant's line. The following note appears on the face of the Little Rock tariff:

"The rates named herein are to be applied on merchandise reconsigned from Little Rock, and will not be applied on business to or from connecting railroads or boat lines."

A similar note is printed on the face of the Pine Bluff tariff, and each of the tariffs provides that the transportation charges shall be fully prepaid.

The Arkansas schedule of rates is based upon mileage; but the greater the distance that traffic is transported the less the rate is per mile. For example, the first class rate in each instance would be as follows:

	Rate in cents per 100 pounds.	Rate per ton per mile, in cents.
10 and over 5 miles	17	34. to 68.
100 " " 95 "	47	9.4 to 9.9
200 " " 190 "	71	7.2 to 7.5
300 " " 290 "	82	5.5 to 5.7

To the above method of making rates in Arkansas, in connection with defendant's line, there is one exception: Rates between points on the Stuttgart branch and other points in Arkansas are made by adding to the mileage rate in each instance a certain arbitrary. In connection with the ten class rates the respective arbitraries, in cents per 100 pounds, are: 8, 7, 6, 5, 4, 4, 3, 3, 2, 2. On carload shipments of commodities the arbitraries range from 1 to 4 cents except that on whiskey the arbitrary is 6 cents per 100 pounds and on coal and coke 15 cents per ton. On less than carload shipments of commodities the arbitraries range from 3 to 6 cents per 100 pounds.

When shipments are made from Memphis to points on this branch the rates are made by adding to the rates to Stuttgart certain arbitraries for transportation on the branch; but in such cases the arbitraries are materially greater than those given above and range as follows: 10 cents per 100 pounds is added to each of the first four class rates; 5 cents to each of the other six class rates; 10 cents to each rate on less than carload shipments of commodities; and 5 cents to each rate on carload shipments of commodities except that the arbitrary on carload shipments of coal or coke is $1 per ton.

Of the 41 points in Arkansas mentioned in Exhibit "A" 3 are on said branch, 6 on the Little Rock branch, and 32 on defendant's main line. Of the latter 15 are north and 17 south of Pine Bluff, and the latter point is distant from Memphis 156 miles. Generally speaking it may be said that the discriminations against Memphis are materially greater to points south than to points north of Pine Bluff, but among the latter there are many wide variations.

Disparities against Memphis per carload on live stock range as below:

Horses and Mules.	Cattle and Hogs.	Sheep.
$ 3.10	$ 5.	$ 5.
5.10	5.50	10.
7.10	6.	11.
9.10	6.50	12.
11.10	8.	13.
12.	10.	14.
14.	11.	15.40

Horses and Mules.	Cattle and Hogs.	Sheep.
16.	11.50	15.80
16.60	12.40	16.40
18.60	12.50	17.40
18.90	13.80	17.80
19.10	14.40	19.
20.60	15.40	22.
21.50	15.80	23.
23.80	17.40	23.40
26.10	19.	24.
27.30	19.40	24.40
28.40	19.60	25.40
31.30	20.80	25.60
33.	21.	26.80
	21.40	27.
	22.	27.20
	22.20	

On live stock, defendant's rates to Memphis from the Arkansas local points are generally much greater than rates for like distances to Memphis from points on the other roads above mentioned.

From Memphis the rates are on a lower mileage basis to points in Arkansas north of Fair Oaks than to points in that State south of Fair Oaks. This, according to defendant's freight traffic manager, is caused by the relation defendant seeks to maintain between St. Louis and Memphis; that is to say, it first fixes its rates to points in Arkansas from St. Louis and then makes rates to the same destinations from Memphis certain differentials under the rates from St. Louis. However, an examination of tariffs on file with the Commission indicates that this rule is not strictly adhered to. Class rates in cents per 100 pounds from St. Louis and Memphis to points in Arkansas north of Fair Oaks, together with the distance in each instance from shipping points to destination, are shown in the following table:

To	Distance in miles. From St. Louis.	Distance in miles. From Memphis.
St. Francis	213	163
Piggott,	219	157
Greenway,	223	153
Rector,	229	147

Rates from	Classes. 1	2	3	4	5	A	B	C	D	E
St. Louis,	80	65	50	40	30	32	26	20	16	12
Memphis,	75	60	47	37	28	30	26	20	17	14

With the much greater distances from St. Louis, some of the rates above shown are less from that city than from Memphis, and the whole adjustment indicates that the rates are favorable to St. Louis compared with Memphis. Other evidence in the record indicates that as between Memphis and St. Louis rates of the St. L., I. M. & S. to points in Arkansas are more favorable to Memphis than defendant's rates are; but the circumstances and conditions bearing upon the reasonableness or unreasonableness of adjustments as between Memphis and St. Louis were not shown, except so far as they relate to rates on cotton which will be hereafter referred to; and, with this exception, the question whether or not as between Memphis and St. Louis defendant's rates are unduly discriminatory against Memphis is not included in the agreement of submission.

When cotton seed is shipped from local points in Arkansas to Little Rock or Pine Bluff, defendant is able to participate in the transportation of cotton seed products from the latter two points to markets of consumption; but when cotton seed is shipped from such local points to Memphis defendant's relation to the products is somewhat different. To some extent the line between Fair Oaks and Memphis may be treated as though it were a tunnel. Defendant cannot do business by its own trains between points on that line, and therefore cannot derive the benefits resulting from an increase of such business. It could of course make rates on the products from Memphis to northern and northeastern markets, but perhaps would not be as free to do so as though it owned the line between Memphis and Fair Oaks. Similar conditions exist as to other freight articles, whether the traffic originates at local points in Arkansas on defendant's line or is shipped to such points from northern or eastern markets. To illustrate: If goods are shipped from such markets to Memphis, Little Rock or Pine Bluff and afterwards reshipped to local points in Arkansas, defendant in each instance receives the benefit derived from transporting the reshipments; but while it might participate in the transportation from such markets to Memphis, Little Rock and Pine Bluff, the Memphis situation, as above explained, would be somewhat

less favorable to defendant than that of either of the other two destinations.

Compared with the other roads herein mentioned, the K. C., F. S. & M. traverses only a small portion of Arkansas and is not very much affected by rates made by the Arkansas Commission. So far as character of country and density of population are concerned, the location in Arkansas of defendant's road appears to be as good as that of either the C., O. & G. or the St. L., I. M. & S.; but other comparisons are somewhat difficult and perhaps not very important. Gross earnings per mile of road and percentages of operating expenses to gross earnings, for the fiscal year ending June 30, 1904, are shown in the following table:

Name of Road.	Gross Earnings. per mile.	Percentages of Operating Expenses to Gross Earnings.
C., O. & G. R. R.	$5,088.	68.25
St. L., I. M. & S. Ry.	8,985.	69.13
St. L. S. W. Ry.	7,839.	60.32
St. L. S. W. Ry. of Texas	4,410.	91.26

The mileage operated was, in each instance, as below:

C., O. & G. R. R.	1,087.90 miles.
St. L., I. M. & S. Ry.	2,231.72 "
St. L. S. W. Ry.	632.30 "
St. L. S. W. Ry. of Texas	676.62 "

The St. Louis Southwestern Railway of Texas, although operated separately, is a part of the St. Louis Southwestern System. It connects with defendant's road at Texarkana and runs southerly and southwesterly therefrom. This road is entirely located in the state of Texas.

It will be seen that the earnings of the St. L., I. M. & S. are materially greater than those of defendant; but this is due largely, if not entirely, to the better connections made and terminal facilities possessed by the former. Although these roads are both owned largely by the same individuals, and known as "Gould" properties, the financial condition of the St. L., I. M. & S. is much better than that of the St. L. S. W. The former, in addition to paying interest on its funded debt, pays substantial dividends regularly on its capital stock; while the latter, although it pays interest on its funded debt, does not pay

dividends on its capital stock. The funded debt of the St. L. S. W. cannot be stated separately, but the funded debt of the St. L. S. W. System for the fiscal year ending June 30, 1904, was $40,881 per mile of road.

As shown by the above table, the earning capacity per mile of defendant's road is somewhat greater than that of the C., O. & G.; but the financial condition of the latter is much better than that of the former.

Memphis, Little Rock and Pine Bluff are jobbing centers of importance and compete with each other at local points in Arkansas; and, in this competition, Memphis is very much handicapped by the disparities in rates here in question; except where, because of the more favorable location, it has an advantage in rates from northern, eastern or southern markets; or where, as in case of dry goods and similar articles, transportation charges are not a very important factor. In some instances also the articles shipped to local points in Arkansas are manufactured at Memphis, a circumstance which inures to the benefit of that city. Its proximity to Birmingham and connection by river with Pittsburg enable it to obtain favorable rates on iron and steel articles, including wire, wire fencing, nails and heavy hardware, and its connection by river with New Orleans enables it to obtain favorable rates on heavy groceries, including sugar and molasses. In the distribution and sale of these articles at the local points in question Memphis is apparently able to compete successfully with Little Rock and Pine Bluff, but in the case of many other articles the disparities in rates are greater than the profits ordinarily made by jobbers.

A large portion of the traffic is said to be controlled by trusts, so-called, which make delivered prices, including transportation charges, at such points as Memphis, Little Rock and Pine Bluff; and, in many instances, the price made is the same at each of the three points specified. This gives Little Rock and Pine Bluff an advantage over Memphis in the competition referred to, because the former two cities are nearer than Memphis to the local points in question. One of defendant's witnesses, a wholesale dealer in groceries, estimated the goods in

his line controlled by trusts to be over fifty per cent of the whole, whether measured by dollars and cents or by tonnage.

Of the business done by defendant to and from points in Arkansas, only about five per cent is intrastate, the balance being interstate. Of the latter the business done by defendant to and from Memphis constitutes about one per cent.

The authority of the Railroad Commission of Arkansas to make schedules of rates for the transportation of freight articles and require railroads in that state to comply therewith was not definitely shown, but such authority is not disputed by either party to this proceeding.

Broadly speaking, defendant relies upon dissimilarity in circumstances and conditions to justify the differences in rates above shown, and contends that it is in no way responsible for any disparity which resulted from the action of the Railroad Commission of Arkansas. In other words, defendant insists that the rates between Little Rock and Pine Bluff on the one hand and local points in Arkansas on the other are intrastate rates made and enforced by a state commission and that, therefore, unjust discrimination can not to any extent be predicated upon disparities between those rates and the interstate rates of defendant between Memphis and the same local points.

In October, 1903, defendant's traffic manager, by way of compromise, offered to make reductions per 100 pounds in defendant's rates to Memphis from points on defendant's line as follows: To stations, St. Francis to Clarendon inclusive (excluding Paragould, Bethel, Brookland, Jonesboro, Fair Oaks and Brinkley) rates to be reduced 5 cents on 1st class, 4 cents on 2nd class, 3 cents on 3rd class, 2 cents on 4th class, and 1 cent on carloads. The rates now in effect from Memphis to stations, Roe to Little Rock, inclusive, to remain on the present adjustment. No change in rates to points south of Altheimer to Pine Bluff inclusive. To stations south of Pine Bluff, to and including McNeil, Ark., (excluding Camden) rates to be reduced 10 cents on 1st class, 8 cents on 2nd class, 6 cents on 3rd class, 5 cents on 4th class, and 3 cents on carloads. To points south of McNeil, to but not including Shreveport and Texarkana, rates to be reduced 5 cents on 1st class, 4 cents on 2nd

class, 3 cents on 3rd class, 2 cents on 4th class. In no case shall the rate from Memphis be less than ten cents per 100 pounds. The local points here in question would be included in the above.

Rates on uncompressed cotton, included in Exhibit "B," together with the distance in each instance from shipping point to Memphis, are shown in the following table:

From:	Distance in miles from Memphis.	Rates in cents per 100 pounds. To Memphis.	To Cairo, St. Louis or East St. Louis.
St. Francis,	163	30	35
Piggott,	158	30	35
Greenway,	154	30	35
Hammetts,	152	30	35
Rector,	148	30	35
Weiner,	88	30	35
Fisher,	78	30	35
Hunter,	75	30	40
Roe,	108	30	40
Ulm,	114	35	40
Stuttgart,	121	35	40
Almyra,	133	35	45
DeWitt,	144	35	45
Gillett,	156	35	45
Humphrey,	133	35	45
Wabasseca,	139	35	45
Altheimer,	144	35	45
Sherrill,	152	35	45
Tucker,	155	35	45
England,	163	35	45
Keo,	167	35	45
Toltec,	172	35	45
Scotts,	176	35	45
Rob Roy,	148	35	45
Kendalls,	172	45	45
Clio,	173	45	45
Rison,	178	45	45
Draughon,	186	45	45
Kingsland,	188	45	45
Fordyce,	195	45	45
Thornton,	201	50	50
Little Bay,	203	50	50
Bearden,	209	50	55
Millville,	212	50	55
Eagle Mills,	215	50	55
Onalaska,	217	50	55
Stephens,	246	50	55
Waldo,	261	50	55
Lumber,	265	50	55
Buckner,	269	50	55
Lewisville,	277	50	55
Canfield,	290	55	55
Bradley,	296	55	55
Garland City,	341	55	60

In addition to rates on uncompressed cotton as above, defendant makes through rates to Boston on compressed cotton from all points named in above table between Kendalls and Garland City, except Canfield and Bradley. In each instance the through rate per 100 pounds is 85 cents, except that from Lumber, Buckner, Lewisville or Garland City it is 90 cents. All the shipping points from which the through rates apply are on defendant's main line south of Pine Bluff, except Canfield and Bradley, which are on the Shreveport branch. Aside from the two points last mentioned and Garland City the shipping points shown in above table are the same as the local points in Arkansas included in Exhibit "A" to the agreement of submission. Of the 44 shipping points included in Exhibit "B" and named above, 7 are north and 37 south of Fair Oaks; and in each instance where the shipping point is south of Fair Oaks, the distance is about 115 miles greater to Cairo and a little more than 250 miles greater to either St. Louis or East St. Louis than to Memphis. Nevertheless, in each instance the rate on uncompressed cotton is the same to Cairo as to St. Louis or East St. Louis. An examination of the table will also show, between the shipping points above mentioned on the one hand and Memphis on the other, a great lack of uniformity. Of the 7 shipping points north of Fair Oaks, 5 are nearer to Cairo than to Memphis, but in each instance the rate to Memphis is 5 cents less than to Cairo. However, from 37 shipping points south of Fair Oaks, from which the distance is in each instance a certain number of miles greater to Cairo, St. Louis or East St. Louis than to Memphis, the rate in some cases is the same to Memphis as to any of the other three destinations, in others 5 cents less, and in still others 10 cents less. None of these shipping points is what is known as a competing point, and no serious attempt was made to explain the inconsistencies here noted. Defendant's freight traffic manager said that, in order to meet the Texas rate situation, it was necessary to grade up the rates from the south end of defendant's line, but that does not necessarily affect the relation of rates from these points to Memphis and the other destinations named.

The rates on uncompressed cotton to St. Louis, East St. Louis

and Cairo apply also to Thebes and Gale, and the through rates mentioned apply via Cairo, Gale and Thebes, but do not apply via Memphis.

It has been stated that the through rates apply on compressed cotton, but while this is practically accurate, the application shown by defendant's tariff is on "uncompressed cotton, carrier's privilege of compressing." When cotton is shipped under this tariff defendant's method of procedure is as follows: It hauls the cotton to the first compress point en route, where it pays 10 cents per 100 pounds for unloading, compressing and reloading, and then hauls it to Cairo, Gale or Thebes and turns it over to some other road for transportation to Boston. Of the through rates, the roads leading east from Cairo, Gale or Thebes receive in each instance 37 cents per 100 pounds, the balance going to defendant; but out of such balance defendant pays 10 cents per 100 pounds for compressing, etc., as above stated. It will thus be seen that in every case the net amount received by defendant is 38 cents per 100 pounds, except that on shipments from Lumber, Buckner, Lewisville or Garland City, defendant receives 43 cents; while defendant's rates from the same shipping points to Cairo, Gale or Thebes on uncompressed cotton, properly so called, as is shown by above table, range from 45 to 60 cents per 100 pounds.

When cotton is delivered to defendant for transportation it is put up in bales of an average weight of about 500 pounds; and about twice as many compressed as uncompressed bales can be loaded in a given car. The ordinary car will hold about 25 bales of uncompressed or 50 bales of compressed cotton. However, while the rate per 100 pounds is the same in case of a carload as of a single bale, shipments under the through rate are usually made in lots of fifty bales or multiples thereof, while shipments under the other rates range from 1 to 25 bales.

There are several compress points on defendant's line, and as the compressing is usually done at the first compress point en route defendant hauls the cotton in an uncompressed condition, under said through rates, only comparatively short distances.

Rates to Boston on uncompressed cotton are as follows: From Thebes, Gale or Cairo, 49½ cents per 100 pounds, and from

Memphis, 55½ cents. To even up this difference, therefore, it would be necessary to make rates from shipping points in Arkansas 6 cents per 100 pounds less to Memphis than to Thebes, Gale or Cairo. Only a comparatively small amount of cotton is transported to Boston from points on defendant's road in an uncompressed condition; it is usually compressed at some local point and forwarded through the Gale and Thebes gateways.

Between September 1, 1903, and May 13, 1904, shipments of cotton from points on defendant's road in Arkansas to St. Louis, East St. Louis, Cairo, Gale and Thebes, and through those crossings to eastern destinations, were in bales as follows:

UNCOMPRESSED.

To St. Louis.	To East St. Louis.	Via Cairo.	Via Gale.	Via Thebes.
27	3,539	124	1,338	297

COMPRESSED.

	138			

COMPRESSED.

Via St. Louis.	Via East St. Louis.	Via Cairo.	Via Gale.	Via Thebes.
3,525	1,138	——	16,647	4,549

During the same time the number of bales shipped from points on defendant's road in Arkansas to and through Memphis was 19,636.

Shipments shown under the head of "Compressed" represent cotton which was compressed at points on defendant's road and hauled to such points by defendant in an uncompressed condition.

Defendant's rates on cotton are not as favorable to Memphis as the rates of other roads which run westerly from that city, and during said period receipts of cotton at Memphis from points on the other roads were in bales as follows: Rock Island System, 132,538; Frisco System, 45,950, and St. L., I. M. & S., 64,857.

As above stated the rate to Boston on uncompressed cotton is 6 cents more from Memphis than from Thebes, Gale or Cairo, and the same is true as to compressed cotton. Rates from points west of the Mississippi River to Boston and other eastern desti-

nations are generally made by adding to the rate from the shipping point to the river what is known as a proportional rate from the river to the eastern destination; and the proportional rate on compressed cotton to Boston is 43 cents from Memphis, but only 37 cents from Thebes, Gale or Cairo. It will thus be seen that the rate from the river to Boston is 12½ cents per 100 pounds more on uncompressed than on compressed cotton. Therefore, since the cost of compression is usually only 10 cents per 100 pounds, the cotton is generally concentrated and compressed at the river or at some point west of the river; and where the distance from shipping point to destination is considerable carriers prefer to pay this 10 cents for compression at the concentration or compress point nearest to the point of origin, because, as above stated, about twice as much compressed as uncompressed cotton can be loaded in the same car. This disposition on the part of carriers has caused the erection of many additional compresses in recent years, and, as a consequence, the proportion of cotton shipped to Memphis in an uncompressed condition is much smaller now than formerly.

What complainant desires is an adjustment of rates which will tend to concentrate at Memphis for compression and other purposes, and to forward through that city to Boston and other eastern destinations, cotton grown in Arkansas and shipped from points in that state on defendant's road; and, so far as points south of Fair Oaks are concerned, such an adjustment would result if the rates were made according to the mileage basis used in making rates between points in Arkansas. As above stated, the distance in each instance is about 115 miles greater to Cairo than to Memphis; to Gale or Thebes about 125 miles greater than to Memphis; and the distance in each instance to Boston from the points south of Fair Oaks is about 100 miles less via Memphis than via Cairo, Gale or Thebes.

Differences in rates on uncompressed cotton have already been stated; and through rates from some of the Arkansas points to Boston via Cairo, Gale and Thebes have also been shown, but such through rates do not apply via Memphis. Therefore, elements of cost pertaining to a shipment via Memphis would be as follows: Rate to Memphis, cost of com-

pressing at Memphis, and rate from Memphis to Boston. From points from which the 85-cent through rate applies rates to Memphis range from 45 to 50 cents. The above combination, then, per 100 pounds, would be: Rate from shipping point to Memphis, 45 to 50 cents, compressing 10 cents, and rate from Memphis to Boston 43 cents, making a total of either 98 cents or $1.03.

But defendant prefers to haul the cotton to Cairo, Gale or Thebes for the following reasons: It has its own line to Gray's Point and Bird's Point, runs its own transfer boats from Gray's Point to Gale and Thebes, and operates, jointly with the St. L., I. M. & S. Company, transfer boats between Bird's Point and Cairo; while in connection with Memphis it runs 60 miles over another line. The expense of transfer by boat at either Gray's Point or Bird's Point is about 80 cents per loaded car, while the toll paid for crossing the river at Memphis is 2 cents per 100 pounds. Its facilities for handling cotton and yarding cars are not as good at Memphis as at the other crossings, and it thinks it can control the cars better when they pass through Cairo, Gale or Thebes than when they pass through Memphis. It purchases coal for its locomotives in the vicinity of Thebes and hauls it thence to points in Arkansas. For this traffic it can get empty cars to better advantage at Cairo, Gale or Thebes than at Memphis, because the distance it has to haul them is much greater from Memphis than from any of the other three crossings. Under present conditions it can more easily obtain loads for its empty cars if shipments pass through Cairo, Gale or Thebes than if they pass through Memphis. It thinks it will be more benefited by building up Cairo, Gale or Thebes than by building up Memphis. It could not easily secure at Memphis as good facilities as it has at the other crossings.

On the other hand, complainant contends that defendant could more easily obtain loads for its empty cars at Memphis if its rates from that point were properly adjusted, and denies that defendant can control its cars to any better advantage at Cairo, Gale or Thebes than at Memphis.

However, the differences in circumstances and conditions above mentioned would not exist if the comparison were between

Memphis on the one hand and St. Louis and East St. Louis on the other, and it has been shown that the latter two cities are accorded the same rates as Cairo, Gale and Thebes on cotton from points on defendant's road. The record shows that the haul to either St. Louis or East St. Louis would be something more than 125 miles greater than to Cairo, Gale or Thebes, and it also shows that defendant pays 5 cents per 100 pounds for the haul over the St. L., I. M. & S. from Gale to East St. Louis. If the shipment were hauled to St. Louis there would be a further expense for transportation by bridge from East St. Louis to St. Louis which defendant would have to pay. The latter charge would be about the same as that for transportation across the river from Bridge Junction to Memphis. A comparison between Memphis and East St. Louis in the matter of facilities for handling cotton was not made, but the record shows that Memphis has as good facilities as those possessed by St. Louis. We are therefore inclined to the opinion that cost to the defendant of the transportation service was not a controlling factor in making the adjustment in question.

Conclusions.

The foregoing findings have been extended to perhaps unnecessary length though they by no means embrace all the facts which appear in the voluminous record. In the effort to omit from the statement nothing of real importance we may have included some matters of detail which have no appreciable bearing upon the questions to be determined.

While the inquiry was instituted at the request of both parties to the controversy, whose written agreement is set forth in the findings, the Commission is not acting in the capacity of arbitrators. In fact as well as form we are conducting a proceeding in accordance with the regulating statute and our authority and duty are not dependent upon or measured by the consent of either party. We proceed therefore to state briefly the conclusions which seem to be warranted by consideration of the material facts developed.

Taking up first that branch of the case relating to rates on cotton to Memphis, we think, under all the circumstances, that

little change is necessary. Defendant should not, in our opinion, be required to make through rates via Memphis merely because it has established through rates from the more southerly stations, Kendalls and points south, via Gale or Thebes, Cairo or East St. Louis; and it is not clear just how Memphis, as a cotton market, would be benefited by through rates, if the rates in and out of that city are fairly adjusted to those at Cairo and St. Louis or East St. Louis.

The uncompressed cotton rates from points north of Fair Oaks (St. Francis to Fisher) favor Memphis by 5 cents per 100 pounds as against Cairo or St. Louis. The rate on compressed cotton to Boston from Memphis is 43 cents, from Cairo 37 cents, and from St. Louis or East St. Louis 35 cents. The cost of compressing, wherever done, is understood to be 10 cents per 100 pounds. These rates, combined through the different gateways, place Memphis at a disadvantage of 3 cents in the Boston market, as compared with St. Louis and 1 cent as compared with Cairo, but considering the relative distances from most points north of Fair Oaks, to Cairo especially if not to St. Louis, the difference of 5 cents in favor of Memphis from the originating stations in Arkansas is perhaps not unjust.

Points south of Fair Oaks show a 10 cent differential in favor of Memphis down to and including Rob Roy on the main line and just north of Pine Bluff, and also from points on the Little Rock and Stuttgart branches, except from Stuttgart itself and Ulm, both on the main line, from which the difference is only 5 cents. No reasons appear why those points should not have the same differential that is applied from points immediately north and south thereof. With the 10 cent differential, the combination rates to Boston favor Memphis by 2 cents as compared with St. Louis and 4 cents as compared with Cairo. Such differential was apparently established because of the proximity of other lines to some of the stations, and we see no reason why it should be disturbed.

South of Rob Roy no differential is allowed from Kendalls to Little Bay, inclusive. South of Little Bay a 5 cent differential applies until Canfield is reached, where, and also at Bradley, the rate is again the same, while at Garland City, the

most southerly local point mentioned, a 5 cent differential is given to Memphis. With no competition at any of the stations just mentioned, it is difficult to understand the reasons for these fluctuating relations. Without the showing of some controlling condition, it seems clear that there should be a uniform difference. The rates apply from points located along the southwestern portion of the line, and from such points the cotton may go to New Orleans as well as to Memphis, Cairo or St. Louis. Nevertheless, with a 5 cent differential from Garland City, near the Texas line, we find no difficulty in holding that a differential of 5 cents could be applied without interfering with the rates from points in Texas, and that at least that differential should apply in favor of Memphis from all stations north to and including Kendalls. If we had more specific information respecting all of the conditions we might be inclined to say that a somewhat greater difference should be allowed.

As to the rates in controversy, other than rates on cotton, it is to be observed that the traffic moving *to* Memphis is not only of a different character, but affected by different conditions from the traffic maving *from* Memphis. Much, if not all, of the freight carried from Arkansas points to Memphis on the one hand, and Little Rock and Pine Bluff on the other, is noncompetitive as distinguished from the direct competition which exists as between Memphis and Little Rock or Pine Bluff for the distributing trade to local points in Arkansas. While there probably is indirect competition between these points for freight originating at Arkansas local stations, a competition for example for reconsignment to distant northern or eastern cities, the conditions affecting such indirect competition are not plainly defined in this case; and in any event there is no such close connection between shipments to Memphis and to Little Rock or Pine Bluff as would require the use of the Arkansas rates as a standard by which to measure the relative justice of defendant's rates to Memphis. For these reasons we are unable to hold that defendant's rates to Memphis, taking them as a whole (except cotton, which has been separately considered), result in any wrongful discrimination or prejudice to Memphis. One exception appears to be found in the live-stock rates to Memphis,

which, as a rule, not only range considerably higher than those for like distances to Memphis on the other roads, but also show wide variations for like distances on defendant's own road to Memphis. As to this traffic it was stated in argument that Little Rock and Pine Bluff are not live-stock markets, and it may be that the present adjustment of live-stock rates to Memphis is based upon rates to other cities, such as St. Louis, or made with reference to rates from some stations to New Orleans. However that may be, we think the defendant should seriously consider the marked disparities between these rates for similar distances on its own line, as well as its much greater rates in some cases than those of other lines, and make such readjustment as justice seems to require. We also recommend consideration of its rates on cotton seed with the view of making them somewhat more favorable to Memphis as compared with Little Rock and Pine Bluff.

The rates from Memphis to local stations on defendant's line in the State of Arkansas constitute the principal grievance of complainant. When the defendant first undertook to carry to and from Memphis, having made an arrangement with the St. Louis, Iron Mountain & Southern road, which enabled it to reach that city, a schedule of rates was adopted and put in force to local points in Arkansas and those rates bore a certain relation to defendant's rates to the same or similar points from Little Rock and Pine Bluff. The relation of rates then established as between these three cities appears to have been for the most part if not altogether acceptable to Memphis. Mr. Davant describes it as fairly satisfactory. He does not admit that the rates from Memphis were reasonable *per se,* but does virtually concede that in comparison with the general run of rates from Little Rock and Pine Bluff there was no unjust discrimination against Memphis. It appears, however, that there were certain jobbers' tariffs, described in the findings, applying on traffic reconsigned from Little Rock and Pine Bluff, which are said not to have been known by Memphis dealers and which complainant now insists were seriously out of line with rates from Memphis. But with this exception the relation of rates which defendant put in force may be regarded as fair and reasonable.

This relation of rates as between these competing cities was altered not long afterwards by the action of the Arkansas Commission which made a very material reduction of rates in that state, a reduction which of course included rates from Little Rock and Pine Bluff to the local points in question. The rates from Memphis remaining the same it is obvious that the lower rates prescribed by the Arkansas Commission had the effect of changing the relation of rates which theretofore existed as between Memphis on the one hand and Little Rock and Pine Bluff on the other. The action of the other roads leading from Memphis in reducing their rates to local points in Arkansas, to correspond in the main with the reduced rates in that state, is set forth in the findings and need not here be recited. A few months later the defendant made some reductions in rates from Memphis but not nearly so great as those made by the other lines and consequently not sufficient to restore the relation which was first established.

It will thus be seen that the relative rates of which Memphis complains, if we except the jobbers' tariffs above mentioned, were not voluntarily established by defendant. It was not the free and uncontrolled action of the carrier which brought about the alleged discrimination but the exercise of authority by the Arkansas Commission. The defendant in nowise acquiesced in the reduction ordered by that Commission but on the contrary manifested its opposition by repeated protests. Short of entering upon a course of litigation with the State of Arkansas the defendant appears to have done about all it could to show its objection to the rates imposed; and has even gone to the extent of printing a protest upon the face of its tariffs.

So far as the discrimination of which Memphis complains was caused by the action of the Arkansas Commission, without the consent and against the protest of defendant, it is certainly doubtful in the present state of the law whether the defendant can be held responsible.

If its voluntary adjustment of rates as between these cities was fair and equitable and that adjustment has been changed and rendered unfair to one of them by action which the defendant could not prevent or control, it is difficult to see on what

theory it can be held at fault for the resulting discrimination, provided its Memphis rates are *per se* just and reasonable. In a word, we are constrained to reject the complainant's contention so far as the charge of discrimination against Memphis rests wholly upon comparison with the lower rates imposed by the Arkansas Commission.

It does not follow, however, that as to rates from Memphis the defendant is entitled to a report in its favor. To the extent that these rates are in any case unreasonably high, whatever their relation to the Arkansas rates, the defendant is responsible and should reduce its charges accordingly. Taking everything into account we are of the opinion that these rates, or at least many of them, ought to be somewhat more favorable to Memphis shippers. The defendant is not bound to accept the Arkansas schedule as the measure of its charges on Memphis traffic, nor is it under obligation to apply as low rates for corresponding distances as are accorded— for whatever reasons— by the other lines leading from that city. As respects this Memphis business the defendant is under certain disabilities which are described in the findings and may justly, as we think, maintain a higher scale of rates to local points in Arkansas than other roads have seen fit or been compelled to apply.

Nevertheless, the defendant is confronted with the fact that these other roads do, under similar operating conditions, carry Memphis traffic at much lower rates than it is exacting for practically the same service, and that its adjustment of rates as between the three cities named is an actual discrimination against Memphis even if that discrimination be involuntary and therefore not unlawful. The wide difference between its state and interstate rates, while other lines place both upon substantially the same basis, operates to restrict shipments from Memphis and must also be a disadvantage to buyers and dealers at its local stations in Arkansas. These and others matters of similar import, including the low reconsignment rates accorded by defendant to Little Rock and Pine Bluff, have an obvious bearing upon the reasonableness of its present rates from Memphis and support the conclusion that those rates should be reduced. Moreover, it seems plain to us that the defendant

cannot be indifferent to an increase of its Memphis traffic, which presumably would follow a modification of existing charges, and we are convinced that a considerable reduction could be made without sacrifice or risk of its revenue from St. Louis and other traffic upon which the defendant so largely depends.

We do not undertake to determine at this time what reductions ought to be made in these rates from Memphis. Our authority under the Act does not go to that extent and we may properly refrain for the present from attempting a detailed revision. Besides, it is quite probable that no single or uniform rule could be applied to the varying destinations and different articles of traffic. The conditions appear to be unlike and the readjustment should be made with the view of producing the best and fairest practical results. The complainant's demand in substance is that the rates of the other roads for similar distances shall be established to local points on defendant's line. The defendant insists that it should not be required to make any change because its present rates are reasonable and any discrimination against Memphis is something for which it is in no way responsible. Our examination of the case leads to the conclusion that neither of these positions is altogether correct. Although the defendant is not chargeable with any discrimination which results solely from the action of the Arkansas Commission, it is under obligation to provide just and reasonable rates for Memphis traffic. We are satisfied that some of its existing rates, perhaps many of them, are somewhat excessive and ought to be reduced. If this determination is accepted by the defendant, as we think it should be, it will become its duty to revise and modify the charges now applied to Memphis shipments. We assume that it will promptly and in good faith give careful consideration to these rates and make such changes in favor of Memphis as will remove any well-founded claim of injustice.

The defendant will therefore be required within 30 days after receiving a copy of this decision to prepare and submit to the Commission and to the complainant a revised schedule of the rates in question, and to put the same in force by publication and filing as provided by law. The Commission will then determine whether any further order appears to be necessary.

No. 805.

IN THE MATTER OF RATES ON CORN AND CORN PRODUCTS FROM MISSOURI RIVER POINTS TO POINTS IN WASHINGTON, OREGON AND CALIFORNIA.

Decided August 16, 1905.

The relation of rates on corn and corn products from Missouri River points to California terminals was for about one year after January 1, 1890, a differential of 9 cents against corn products. Then, for about one and a half years, it was 9 cents in favor of corn products. The rates were the same between July, 1892, and March, 1895, when a differential of 5 cents against corn products was established. In December, 1897, the differential was increased to 10 cents, and in July, 1902, it was made 20 cents. During March, 1904, the differential was fixed at 17½ cents, and in October of that year it was reduced to 10 cents, and has since remained at that figure. Changes in the relation of rates on corn and corn products from Missouri River points to North Pacific terminals were not greatly different from those mentioned, except that in December, 1897, the rates were made the same on corn and corn products and there is not now any difference unless the minimum carload for corn is the marked capacity of the car, in which case the rates show a differential of 10 cents against corn products. Upon consideration of all the facts and circumstances, *Held*, That the present charges on corn products and corn from Missouri River points to Pacific Coast terminals, in so far as the rate on corn products is more than 5 cents above the rate on corn constitute undue, unreasonable and unlawful discrimination against corn products and producers thereof at places on the Missouri River.

John T. Marchand for the Commission.

Martin L. Clardy for Missouri Pacific Railway Co. and St. Louis, Iron Mountain & Southern Railway Company.

Robert Dunlap for A. T. & S. F. Ry. Co.

W. T. Rankin for Rock Island System.

N. H. Loomis for Union Pacific R. R. Co.

CLEMENTS, *Commissioner:*

The Commission on informal complaint instituted of its own motion an inquiry in the matter of rates on corn and corn products from Missouri River points to points in Washington, Oregon and California, and on the 25th of March, 1905, entered the following order:

"That an inquiry and investigation into and concerning the lawfulness of rates in effect on corn and corn products from Kansas City and other Missouri River points including Sioux City, Iowa, to points in the States of Washington, Oregon and California whereby the charges exacted for the transportation of corn products are greatly higher than the charges established for the transportation of corn, be, and the same is hereby, instituted."

The Missouri Pacific Railway Company, the Union Pacific Railroad Company, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, and the Atchison, Topeka & Santa Fé Railway Company, were made respondents and required to file answer.

The several carriers answering admit a higher rate on corn products than on corn, but deny that said higher rates are excessive or unjust. They claim that the higher value of the lighter, more bulky products, the smaller shipments and greater expense of handling the same justify the higher rates charged. The carriers defending the reduction of rates on corn to northern points, while retaining the old rate upon the products, claim also that they were desirous of increasing revenues by developing a demand for corn as a feed to replace the barley and other coast grains, and that by cheapening the corn by reducing the rate that object would be accomplished, while no such result

need be looked for in a reduction of the rate on meal, since the demand was limited with no probability of increase by reason of a like reduction in rate on meal, which would but slightly affect the price to the consumer.

The Kansas and Nebraska millers claim that any differential will destroy their mills, since the coast mills, purchasing their corn at a cheaper rate in the extreme western corn belt, save on the cost price of their raw material; that the coast mills have the further advantage of a fuel far cheaper than the coal used by their eastern rivals, who pay from $3 to $4.25 for their coal. That the coast mills use electricity generated by water power, or crude oil at a great saving over coal, or slabs from the nearby saw mills at a nominal cost. The coast mills, on the other hand, contend that nothing less than a rate of 20 cents per 100 pounds upon the product above the rates on corn will be of any benefit or enable them to manufacture in competition with the eastern meal. That the fuel saving is nominal or insignificant, being itself but a small factor of cost in the operation. That their wages for labor are far higher than paid by the eastern miller. That in the transportation of their corn, requiring the payment of freight charges on 150 pounds of corn for each 100 pounds of meal produced, they are at a further disadvantage, and that the 50 pounds of resulting offal, though suitable for feed meets no demand and must be sacrificed at less than half its value, and that the cost of machinery is necessarily higher.

FINDINGS OF FACT.

From the evidence we find the facts material to the issue as follows:

On January 1, 1890, the rate on corn from Missouri River points to California terminals was 90 cents per 100 pounds, and 99 cents on corn products, and the 9 cents differential in favor of corn remained in force little more than a year, when the rates on the products were reduced 18 cents—to 81 cents per 100 pounds—and the 9 cents differential was for some occult reason shifted in favor of the products, and that remained in force nearly a year and a half.

In July, 1892, the corn rate was reduced 9 cents, and the

rates on corn and corn products were then the same—81 cents—until April of the next year, when 9 cents was taken off both, and corn and corn products were carried at 72 cents for nearly two years.

In March, 1895, the rate on corn was made 65 cents and that on the products 70 cents, so that once more there was a differential in favor of the corn, but only 5 cents. This was maintained over two and one-half years, until in December of 1897 when the rate on the products was raised 5 cents, and the rates now stood at 65 and 75, a ten cent differential in favor of corn. After nearly four and one-half years, in July of 1902, the rate on corn was reduced to 55 cents, and the differential which had been in 1891 in favor of the products was made 20 cents in favor of the grain. Nearly two years afterward, March, 1904, the rate on the products was reduced to 72½, or 17½ cents differential, and in October of the same year the rate on corn products was reduced to 65 cents, where it remains to-day, with corn at 55 cents, or a differential of 10 cents in favor of the grain.

The changes to the North Pacific coast terminals were not very different, save that in December, 1897, the rate was made 60 cents on both corn and products, where it remains today unless the minimum corn load is the marked capacity of the car, in which case it is carried at 50 cents, or a differential of 10 cents in favor of the grain.

The following is a statement showing rates on corn and corn-products from Missouri River to Pacific Coast terminals, in effect from January 1, 1890, to date:

RATES IN CENTS PER 100 POUNDS.

Missouri River To California Terminals.	Corn	Corn Meal Hominy Grits, etc.
January 1, 1890	90	99
January 29, 1891	90	81
July 18, 1892	81	81
April 11, 1893	72	72
March 5, 1895	65	70
December 15, 1897	65	75
July 1, 1902	55	75
March 8, 1904	55	72½
October 12, 1904	55	65

RATES IN CENTS PER 100 POUNDS.

Missouri River To North Pacific Coast Terminals.	Corn	Corn Meal Hominy Grits, etc.
January 1, 1890	90	99
January 29, 1891	90	81
July 18, 1892	81	81
April 11, 1893	72	72
November 9, 1896	70	70
June 24, 1897	65	70
December 15, 1897	60	60
July 8, 1903	60b 50a	60

b Minimum weight 30,000, same as products
a Minimum weight marked capacity of car.

Certain mills in eastern Nebraska and Kansas engaged in the milling of corn, developed a market upon the Pacific Coast, encouraged by a like rate upon corn and its products to the Northern terminal points for many years. For California terminals for part of the same period the differentials in favor of corn were 20 cents per 100 pounds, and with this margin they found some market, though limited principally to brewery grits and the lighter grades.

Meal and other products of corn are somewhat more valuable than the corn, but not greatly so.

In the carriage of corn and corn products over the mountains to the west and northwest there are no such climatic risks incurred as in the transportation to lower latitudes.

The cars can be alike loaded to capacity with either corn or meal, and in either case with full weight not to fill the car, so the earning power of the corn and meal can be made the same per car to the carrier.

In practically all the territory east of the Mississippi River, covering much the larger part of the traffic of the kind under consideration, the carriers make the rates the same on grain including corn and its products.

There is in the manufactured product some reason for a higher rate than on the raw material, especially when to meet the demands of the traffic a lower carload minimum is given the

advanced article of slightly higher value, but that difference is so slight, as we have seen, as not to affect the traffic moving east where the carriers have seen fit to waive the differential.

The added value is of too little consequence to warrant a much advanced rate. The additional risk is insignificant upon the western traffic, where neither are prone to damage from heating. A fixed difference is far better for all parties concerned than one that may shift with price or rate—about ten per cent will cover with certainty any transportation reasons for a differential.

Corn grits for brewers' use are carried from Kansas City and other Missouri River points to California points at the rate of 65 cents per 100 pounds with a carload minimum of 60,000 pounds, while rice grits for brewers' use—of higher value than the corn—are carried from points in Texas nearly a thousand miles more distant, through Kansas City to the same California terminals, for 55 cents per 100 pounds, the minimum carload being only 40,000 pounds.

We further find, in view of all the facts appearing, that any greater charge or rate for the transportation of the products of corn than for the transportation of corn by the defendants from points on the Missouri River to said Pacific Coast terminals in excess of 5 cents per 100 pounds constitutes an undue and unreasonable discrimination against the said products of corn and producers on the Missouri River.

CONCLUSIONS.

It is not within the duty or province of the Commission to offset or balance and equalize advantages and disadvantages or conditions inherent in the business of milling corn on the Missouri River, on the one hand, and on the Pacific Coast, on the other. This would seem to be enough to say in disposing of some of the contentions of the Kansas and Nebraska millers relating to cost of labor and fuel, and like matters, as compared in the respective localities. The validity of the rate adjustment in issue must be determined upon other considerations. Giving full weight to the facts found and to the contentions of the parties interested we are convinced that a differential of 5 cents per 100 pounds more in the rates for transportation here in-

volved on the products of corn than upon corn itself is the utmost that can be justified by any legitimate application of the facts.

The course of these rates, as pointed out in the findings of fact, demonstrates how absurd the claim that rate-making is an exact science, so abstruse and involved as to be beyond the comprehension of the average mind, requiring long training and experience to grasp all its details, and a large and specially fitted corps of experts to preserve the unities and proper relations.

There has, as we have seen, been no differential to some of the points for many years, and, indeed, higher rates upon the grain than upon its products part of the time, and as much as 20 cents differential against the latter, part of the time. We have also seen that corn grits for brewers' use are carried from Kansas City and other Missouri River points to California points at the rate of 65 cents per 100 pounds, with a carload minimum of 60,000 pounds; while rice grits for brewers' use—of higher value than corn—are carried from points in Texas nearly a thousand miles more distant through Kansas City to the same California terminals for 55 cents per 100 pounds, with a minimum carload of only 40,000 pounds.

This is not conclusive as a measure of the reasonable rate on the corn products, but it is satisfactory evidence that the slight reduction which the carriers will be required to make in the disposition of these proceedings will still leave the rates far above what they voluntarily demand for a much more expensive service.

The carload minimum to North Pacific Coast points is 30,000 pounds on products and 50,000 pounds on corn. To California points it is 50,000 pounds on corn or marked capacity of the car, and on products, 60,000 pounds. Just why the carload minimum should be to California terminals double that to North Pacific Coast points on the products does not appear, and is probably an inadvertence which will be corrected when brought to the attention of the carriers engaged in the traffic. It is probably another illustration that the subject of tariff sheets, though involved, owes part of its confusion to artificial methods.

It is our conclusion that the present greater charge upon the products of corn than upon corn itself for the transportation of

the same from points on the Missouri River to said Pacific Coast terminals in so far as the said charge is in excess of 5 cents per 100 pounds more upon the said products than upon the corn constitutes an undue, unreasonable and unlawful discrimination against said corn products and the producers thereof on the Missouri River. An order will accordingly be entered directing the defendant carriers to cease and desist from publishing, charging or collecting any rates for the transportation of the products of corn more than 5 cents higher than those charged simultaneously upon the transportation of corn from initial points on the Missouri River to terminal points in California, Washington and Oregon.

No. 804.

IN THE MATTER OF RATES ON CORN AND CORN PRODUCTS FROM MISSOURI RIVER POINTS TO POINTS IN TEXAS.

Decided August 16, 1905.

Up to February 19, 1905, the rate on corn meal was 3 cents per 100 lbs. higher than the rate on corn for shipments from Missouri River points to points in Texas. On that date, the differential against corn meal was advanced so that it varied from 7 to 9½ cents. On April 15, the differential was made 5 cents for all Texas destinations. The differential for hominy grits and bran remains at 3 cents. Upon consideration of the facts and circumstances, *Held*, That the differential on corn meal shipped from Missouri River points to Texas destinations should not be more than 3 cents above the rate on corn in force between the same points.

John T. Marchand for the Commission.

R. A. Jackson and *W. T. Rankin* for the Chicago, Rock Island & Pacific Ry. Co.

L. F. Parker and *J. S. Eagan* for the St. Louis & San Francisco Railroad Co.

Gardiner Lothrop and *Robert Dunlap* for the Atchison, Topeka & Santa Fé Ry. Co.

Martin L. Clardy for the Missouri Pacific Railway Co. and the St. Louis, Iron Mountain & Southern Ry. Co.

CLEMENTS, *Commissioner:*

On the 25th day of March, 1905, the Commission entered the following order:

"That an inquiry and investigation into and concerning the lawfulness of rates now in effect on corn and corn products from Kansas City and other Missouri River points including Sioux City, Iowa, to points in Texas, whereby the charges exacted for the transportation of corn products are greatly higher than the charges established for the transportation of corn, be, and the same is hereby, instituted."

The Atchison, Topeka & Santa Fé Railway Company, the Chicago, Rock Island & Pacific Railway Company, the St. Louis & San Francisco Railroad Company, the Missouri, Kansas & Texas Railway Company, the Missouri Pacific Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, and the Kansas City Southern Railway Company, were made respondents and required to file answer.

The answers of the principal roads involved admit the rates for corn products slightly greater than for corn but deny such differences are unfair, unreasonable or excessive.

The facts as developed at the hearings and the conclusions are set forth below.

There are more than 20 mills upon the Missouri River engaged in the grinding of corn and have been for many years, representing a capital of $2,500,000 or $3,000,000, near the heart of the corn belt which ship their products east, west and south. The products of corn after treatment at these mills are brewers' grits or meal for the manufacture of beer, hominy grits and various so-called cereals for breakfast foods, chops, bran and meal for feed, and various grades of table meal from granulated to whole grain meal, the latter containing the bran, heart and every part of the grain, the only waste being a fractional per cent of dust in the cleaning.

The rates on corn meal from Missouri River common points to Texas points was for many years three cents per 100 pounds higher than on corn. On February 19, 1905, the rates on corn meal were advanced to rates varying from seven to nine and one-half cents per 100 lbs. higher than on corn. On April 15, 1905, the differential on corn meal above the corn rates was reduced to five cents.

Statement showing rates on corn and corn meal, C. L., from Kansas City, Mo., to Texas points taking following group numbers, January, 1900, to date.

Rates in cents per hundred pounds.

Southwestern Tariff Committee I. C. C. numbers.	From Missouri River, Kansas City, and St. Joseph, Mo., and Atchison, Kans.	Group 1.		Group 2.		Group 3.		Group 4.		Group 5.	
		Corn	Corn Meal	Corn	Corn Meal	Corn	Corn Meal	Corn	Corn Meal	Corn	Corn Meal
S-5	January 30, 1900	29	32	33	36	35	38	38	41	41	44
172	September 5, 1900	29	32	33	36	35	38	38	41	41	44
273	December 15, 1902	26½a	29½a	26½a	29½a	29a	32a	30½a	33½a	30½a	33½a
273	December 15, 1902	25b	28b	26½b	29½b	29b	32b	30½b	33½b	30½b	33½b
309	September 11, 1903	26½	29½	29	32	30½	33½	30½	33½	31½	34½
S-27 to I. C. C. 340	February 19, 1905	26½	35	29	37½	30½	37½	30½	40	31½	41
S-37 to I. C. C. 340	April 15, 1905 to date	26½	31½	29	34	30½	35½	30½	35½	31½	36½

a Via A. T. & S. F., C. R. I. & P. and M. K. & T. Rys.
b St. L. & S. F. R. R., Kansas City Southern Ry., and Missouri Pacific Ry.

The liability to damage of both corn and its products in so far as relates to the question of transportation lies principally in the tendency of each to heat in any confined space, especially when conditions are aggravated by any acquired moisture and transportation into lower latitudes with higher temperature.

With defective cars, leaky roofs, torn sacks and the absorption of offensive odors from cars used for other purposes and inadequately cleaned, the losses incident to either are either avoidable with ordinary care or alike serious and need not be considered as of such dissimilar importance as to justify any great difference in rates.

The relative cost of transportation of corn and its products to the carrier is something in favor of a lower rate for the grain, which is usually carried in heavier carloads. The slightly higher value of the products would seem, too, to justify a rate something in advance of that charged on the raw material. That this is not material is amply established by the fact that no differential is established in practically all the eastern and southern territory of the United States.

The minimum carload weight of corn to Texas points is fixed at 50,000 lbs. and the minimum on meal at 30,000 lbs. for the accommodation of the northern millers, to meet the demands of the trade in Texas, there being no transportation difficulty in maintaining the same minimum on both. This arrangement is a concession to commercial necessities or convenience, many smaller markets being unable to handle so large quantities, and to that extent it is to the advantage of the northern millers.

Hominy grits and bran do not load so heavily as corn, but on these items the differential is only three cents above the rate on corn; the first two are of greater value than the meal, which has a higher rate than either corn or any other of its products, though chops with only a three cent differential, as appeared by the testimony was most liable to suffer damage by heating in transit.

The testimony of the carriers on the reasons justifying a higher rate on meal than corn was not quite convincing, es-

pecially since the reasons were not of sufficient importance to apply to any of the eastern traffic.

One held that the only additional cost was the additional damage meal might sustain—that the only reason was increased liability to damage; one that the reason was the difference in loading, applying more particularly to Texas trade where the minimum on corn is 50,000 and meal 30,000 lbs.; but another declared that with the same minimum the differential ought to remain the same; and still another declared that the risk was not a great factor, and this seemed plausible enough since more than one witness for the southern carriers declared that damages were not paid on meal which heated, if in transit only a reasonable time; and a shipper said his one claim for damages to a car of meal was on one which had been seventy days on the road.

No special car is used for the transportation of either commodity, both being carried in common box cars. Taken altogether there seems little justification for the carrier to impose any great differential on meal on any grounds of increased risk save in case of wrecks or destruction, which are too remote to tax the higher priced meal much beyond that greater value; and even the chances of salvage in case of wrecks would be rather in favor of the sacked meal over bulk grain, although, of course, it might happen either could be an entire loss. How very remote the extra risk is shown by the fact that it is ignored in fixing the relative rates on corn and meal destined for eastern markets.

There was a wide divergence in the opinions and the testimony of the carriers and the shippers as to the relative losses and claims for damage on corn and corn meal. The carriers contended that they were subject to more numerous claims for damage on the product than on the grain, while the shippers insisted that both were equally subject to heating from moisture and the higher temperature of the southern routes, but that the kiln dried products were practically safe from this damage; that the meal being packed in barrels or sacks was liable to suffer only a local damage from a leak, while the bulk corn might be affected for the whole end or en-

tire car; and that a leak from a faulty door or floor might permit the loose grain to waste for the entire route, while the package products would be safe. The risks of faulty cars are easily avoided, and over the entire country the proportion is constantly growing less, since there is an undoubted progress in the standard of equipment. That there is no very marked difference in the proportion of damages sufficient of itself to necessitate a differential is apparent from the fact that on a greater portion of this traffic covering thousands of square miles of territory and supplying far more than half the population of the states, the rates are exactly the same for both corn and meal.

The milling of corn is a simple and inexpensive process, and the testimony showed that the estimates of cost for making corn meal added about ten per cent to the product above the cost of the grain.

Brewers' grits, hominy, and the higher products, though costing a trifle more, are and have for a long period been carried at a differential of three cents above the price of corn, notwithstanding the reasons for a higher rate on meal for light loading or tendency to heat applied with greater force to some of these than to meal.

In view of the fact that a ten per cent differential while fair enough would be a shifting rate which would cause embarrassment and confusion to the shipper and carrier alike; that three cents is the nearest fixed rate to ten per cent of the freight charge between terminal points in this controversy; that three cents has been long in force without serious friction on all the products except meal and on meal to the present year; that while with equal loads, or equal minimums, equal rates would be no hardship to the carriers who have no differentials for most of this trade; that the minimum of 30,000 lbs. on meal to Texas points and 50,000 lbs. on corn is a substantial concession to the shipper in its relation to the southern trade; that some differential is justified by the conditions of transportation; it is the opinion of the Commission that the differential on meal should not be higher than the more costly products of corn, not higher than it has been for a series of years, and not higher

under present conditions than three cents per hundred pounds above the freight charge on corn per 100 lbs. for the same service.

An order will be entered directing the defendant carriers to cease and desist from publishing, charging and collecting a higher rate on corn products from so-called Missouri River points to points in Texas in excess of three cents per 100 lbs. above the rates simultaneously in effect for the transportation of corn from said Missouri River points to points in Texas.

No. 803.

IN THE MATTER OF RATES ON CORN AND CORN PRODUCTS FROM MISSOURI RIVER POINTS TO POINTS IN LOUISIANA.

Decided August 16, 1905.

Prior to July 1, 1905, rates per 100 lbs. from Missouri River points to points in Louisiana were 5 cents higher on corn meal than on corn, but on that date the differential was removed by respondents and the rates on corn and corn meal made the same. Such action having obviated the complaints herein, no order is considered necessary.

John T. Marchand for the Commission.

Martin L. Clardy for Missouri Pacific Railway Company and St. Louis, Iron Mountain & So. Ry. Co.

CLEMENTS, *Commissioner:*

The Commission on various informal complaints, entered the following order on March 25, 1905:

"That an inquiry and investigation into and concerning the lawfulness of rates now in effect on corn and corn products from Kansas City and other Missouri River points, including Sioux City, Iowa, to points in the State of Louisiana, whereby the charges exacted for the transportation of corn products are greatly higher than the charges established for the transportation of corn, be, and the same is hereby, instituted."

The Missouri Pacific Railway Company, the St. Louis Iron Mountain & Southern Railway Company, the St. Louis & San Francisco Railroad Company, and the Kansas City Southern Railroad Company, were made respondents and required to file answer.

The answers of the Missouri Pacific Railway Company and the St. Louis, Iron Mountain and Southern Railway Company

admit a differential of 5 cents per hundred pounds more on corn meal to Louisiana points than on corn, but justify the same on the grounds of greater care required in the shipment of corn meal than of corn, and the greater risk of damage or injury to the manufactured article than to the raw material.

A hearing was held at Chicago on May 8 and 9, 1905.

On July 1, by I. C. C. 7859, the differential between corn and corn meal from Missouri River points to points in Louisiana and Arkansas was removed, the rates on corn and corn meal being fixed at the same rate.

The Commission has, as a rule, approved a reasonable differential between any raw material and the manufactured article, but where the amount of labor, and increased value, and extra risk were so comparatively insignificant as upon grain whole and grain ground, it has not found that any very great extra freight charge was warranted by the needs of the carrier, as a protection to any industry, or just to the consumer, and wherever the carrier has seen fit to waive its privilege of a slightly advanced rate for the carriage of the product, and the rate on the raw material was reasonably low, the Commission has not interfered with that discretion.

In the present instance it is found that the rates on corn and corn products are the same over all that part of the country lying east of the Mississippi River, covering much the greater portion of that traffic in the United States.

By the publication of these last rates to Louisiana and Arkansas points, those states are added to the eastern territory in the like treatment of corn and corn meal, a condition which has long prevailed unchallenged and undisturbed.

The basis of the informal complaints upon which the inquiry was instituted having been thus removed, no order in the premises will be necessary and none will be entered.

No. 640.

THE ROCK HILL BUGGY COMPANY

v.

THE SOUTHERN RAILWAY COMPANY and THE SEABOARD AIR LINE RAILWAY.

Decided August 16, 1905.

Defendants' rate of $1.30 per 100 lbs. on buggies in carloads from Rock Hill, S. C., to Tallahassee, Fla., is not shown to be unreasonable, and under the construction placed upon section 4, or the long and short haul clause of the statute, by the United States Supreme Court, competition by the A. C. L. R. Co. justifies defendants' lower rate of $1.10 for the longer distance to Quincy, Fla.

J. B. Creighton for complainant.

Ed. Baxter and *Claudian B. Northrop* for Southern Railway Company.

Ed. Baxter for Seaboard Air Line Railway.

CLEMENTS, *Commissioner:*

The issue in this case will appear in the statement of facts and the conclusions.

The facts material to the issue, and which are practically undisputed, are as follows:

The complainant, the Rock Hill Buggy Company, located at Rock Hill on the Southern Railway in York County, South Carolina, is a manufacturer of buggies and a shipper to points in other States, including Tallahassee and Quincy in the State of Florida.

The rate on buggies in carloads to Tallahassee is $1.30 per

hundred pounds, the route being by the Southern Railway to Savannah via Columbia, 226 miles, by the Seaboard Air Line to Jacksonville 138 miles, thence by the same line to Tallahassee 165 miles, a total distance of 529 miles, while upon the same line to Quincy, 24 miles more distant, the rate from Rock Hill on buggies in carloads is $1.10 per hundred pounds, boxed, minimum carload weight 8,000 pounds.

The rate to Tallahassee is made with the following combination:

Rock Hill to Jacksonville, Fla., 364 miles, 64 cents, and from Jacksonville to Tallahassee, 165 miles, 67 cents, the Florida Commission maximum rate for that distance, making a total of $1.31 per hundred pounds.

The rate to Quincy is made as follows to Savannah:

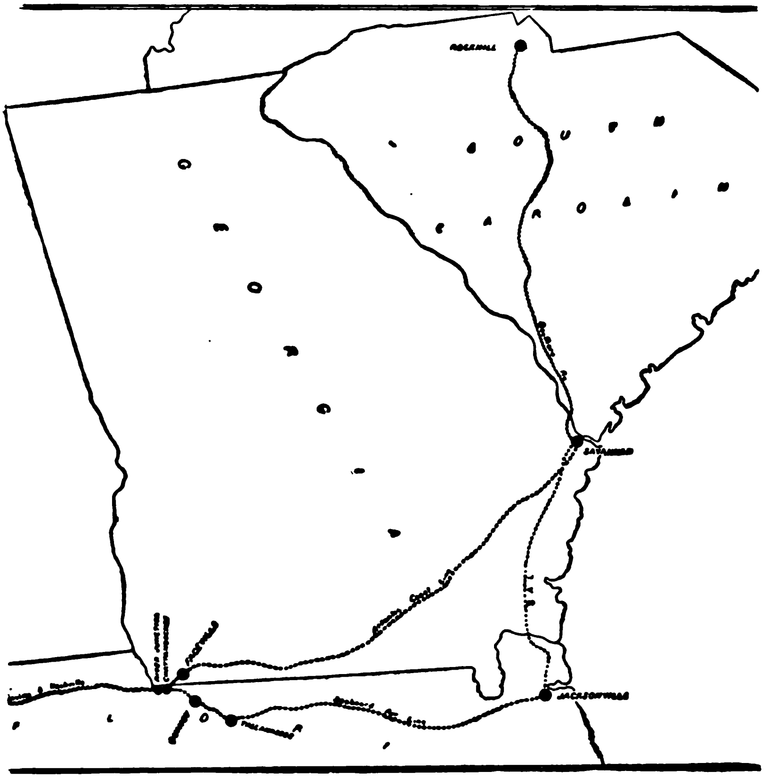
From Rock Hill, 226 miles via Columbia, Southern Railway I. C. C. 8218, 56 cents per hundred pounds, and Savannah to Quincy, I. C. C. 2079–Supp. 1, 54 cents, a total of $1.10 per hundred pounds.

Faceville, Georgia, is on the Atlantic Coast Line, 244 miles from Savannah, and the rate to this point for buggies, boxed, carload, is 54 cents, the minimum rate fixed by the Georgia Commission. By this route through River Junction the distance to Quincy from Savannah is 295 miles, while from Savannah through Jacksonville the distance to Quincy is 327 miles.

By the route to Quincy through Jacksonville the rate would be, if the local or Florida Commission rates prevailed, 67 cents to Tallahassee and 70 cents to Quincy, or $1.31 and $1.34 respectively from Rock Hill.

The rate on buggies is a class rate under the Southern Classification not higher than the rate from South Boston, Virginia, a competing point of production, and no higher than the rates from Richmond and Norfolk, which govern the rates to Savannah and Jacksonville by water competition.

The following sketch illustrates the situation:



Faceville, Georgia, on the Atlantic Coast Line, 244 miles from Savannah, the rate to which, under the maximum rate allowed by the Georgia Commission is 54 cents, is only separated from Quincy on the Seaboard Air Line to the southward by 12 or 13 miles, and a higher rate to Quincy than to Faceville, it is claimed, would cause all buggies for Quincy to be carried by the northern route to Faceville, where they could easily be driven across the country.

The Southern has no published rate to Faceville, but the combination via Savannah would give it the rate of $1.10 per hundred pounds.

The various State Commissions in this Southeast territory have fixed various maximum mileage rates upon the traffic in question, a different classification upon buggies, box, carloads, accounting for part of the wide divergence of rates for like distances.

The following statement shows maximum rates on buggies, carloads, applying in the States named.

Rates in cents per hundred lbs.

Distances	Alabama	Georgia	Florida	Mississippi	South Carolina
100 miles	51	30	55	44	47
150 "	59	35	63	46	52
200 "	65	40	70	48	57

The following statement shows rates on buggies, boxed or well crated, minimum carloads 8,000 pounds, from the following points, to points named below ; also the distances.

Rates in cents per hundred pounds. (Florida, 2nd class ; Georgia, 4th class.)

To	Chattahoochie, Fla.		River Junction, Fla.		Faceville, Ga.		Quincy, Fla.		Tallahassee, Fla.	
From	Distances	C. L.	Distances	C. L.	Distances	C. L.	Distances	C. L.	Distances	C. L.
Barnesville, Ga.	262	95	263	95	247	90	283	114	307	133
Columbus, Ga.	211	111	2 2	111	196	65	232	107	256	107
Cincinnati, O.	817	127	8 9	106	802	115	838	136	862	126
Indianapolis, Ind.	812	137½	813	116½	797	135½	833	155½	857	145½
Chattanooga, Tenn.	451	69	452	69	436	88	472	88	496	111
Cameron, N. C.	638	124	637	124	534	118	617	134	593	131

CONCLUSIONS.

The gravamen of the complaint is not against the unreasonableness of the rate to Tallahassee, which, though somewhat high for the local haul from Jacksonville to Tallahassee, both in the State of Florida, is yet within the maximum rate approved by the Commission of that State for the distance, 165 miles. That Commission has probably taken into account the thinly populated district, the light traffic, and other conditions affecting the rates in question which has led it to establish so much higher rates than the nearby States, almost doubling those of its neighbor on the north.

The higher rate for the shorter distance point is not of itself a violation of the fourth section of the Act to regulate commerce, but only becomes such when the circumstances and conditions of the long and short hauls are similar.

The Commission had construed the limitation "like circumstances and conditions" to take out of the operation of the statute such exceptions as arose from the necessity of meeting water competition at the competing point, but held that where such competition was with another carrier, itself under the jurisdiction of the Commission, the "circumstances and conditions" were not thereby so dissimilar as to make an exception to the application of the fourth section of the Act to regulate commerce.

But the Supreme Court in the Alabama Midland Case, 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. Rep. 45, and in the Behlmer Case, 169 U. S. 644, 42 L. ed. 889, 18 Sup. Ct. Rep. 502, and elsewhere, held that the competition of rival roads, and any competition, at the longer distance point must be given consideration.

With the competition at Faceville, and at River Junction the Atlantic Coast Line reaching the competing point on the low maximum fixed by the Georgia Commission, the lower rate to Quincy is justified if the Seaboard Air Line is to carry the traffic, since with the low combination through Savannah and Faceville the freight in question would otherwise be carried by that route. In view of the decisions of the Supreme Court

above mentioned this Commission must recognize that competition. The facts disclosed afford no sufficient basis for a finding that the rates are unreasonable. It follows that the complaint must be dismissed.

No. 545.

BUREAU OF FREIGHT AND TRANSPORTATION OF CHARLESTON, S. C.

v.

THE NORFOLK & WESTERN RAILWAY COMPANY, *et al.*

Decided August 16, 1905.

This case, involving the reasonableness and justice of freight rates from Chicago, St. Louis, Louisville, and other Ohio River and Mississippi River points, is similar to, and was held to await the final disposition of, the case of Wilmington Tariff Asso. v. Cincinnati, P. & V. R. Co., *et al.* 9 I. C. C. Rep. 118, in which proceeding the Commission entered an order requiring correction of rates from the same points to Wilmington, N. C., but such order the United States Circuit Court declined to enforce. During the present year the rates from Chicago to Ohio River crossings have been materially reduced on shipments destined to southeastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington. *Held,* That in view of the decision of the Circuit court in the Wilmington case, no enforceable order of relief can be predicated upon the facts shown in this case, and the complaint must be dismissed.

J. P. K. Bryan, counsel for complainant.
Ed. Baxter, counsel for defendant.

Report and Opinion of the Commission.

Clements, *Commissioner:*

This complaint was brought about the same time that the complaint of the Wilmington, North Carolina, Tariff Association was instituted against the Cincinnati, Portsmouth & Virginia Railroad Company, and others. (See Interstate Commerce Commission Reports, Volume 9, page 118.) This last-

named complaint will be hereinafter designated as the Wilmington Case. The present case, like that, involved the reasonableness, justice and legality of rates from Chicago, St. Louis, Louisville, Memphis and other Ohio River and Mississippi River points. In that case the complaint was as to the rates from the points named to Wilmington N. C. In this the complaint is as to the rates to Charleston, S. C. In both cases emphasis was laid upon a comparison of the rates in question with those from the same points of origin to Norfolk, Richmond and Lynchburg, Va. The rates from said points of origin to both Wilmington and Charleston are made under substantially similar circumstances and are subject to like general conditions and influences of water and rail competition. While Charleston is nearer to most of the points of origin by direct line than Wilmington, the latter is much nearer the Virginia cities above named, to which the lower scale of trunk line or official classification through rates apply, than is Charleston. The rates to Charleston are higher than those to Wilmington. The rates to both cities are lower than to many intermediate interior shorter-distance points.

At the time of the hearing of the cases it was the practice of the lines north of the Ohio River, to charge their respective rates to the river on shipments from points beyond and for the lines leading from and south of the river to apply their separate rates from the river to destinations in southeastern territory, including Wilmington and Charleston, and the through rates were made up in this way to both places. Effective May 16, 1905, the lines carrying from Chicago to the Ohio River crossings put in proportional rates on shipments from that city to southeastern points, including Wilmington and Charleston, resulting in a reduction of the through rates from Chicago of 5 cents per hundred pounds on goods of the 1st class; 4 cents 2d class; 3 cents 3rd class, and 4th, 5th and 6th classes 2 cents, respectively.

The Commission in disposing of the Wilmington Case concluded that certain of the rates involved were unreasonably high and unduly discriminating against Wilmington, and made an order upon that basis that the defendant carriers cease and

desist from enforcing the rates so condemned. Suit was instituted in the Circuit Court of the United States at Wilmington for the enforcement of the order of the Commission. The court refused to enforce same, holding that the rates involved were in no respect unlawful.

The parties to the present case were advised that on account of the similarity of the questions involved in the two cases, as well as the similarity of circumstances and conditions of influence in the establishment and application of the rates to both of said complaining cities from said common points of origin, and the like circumstances and conditions under which it was shown that the transportation was conducted in both cases, this case would be withheld by the Commission to await the result in the Wilmington Case. Since the decision of the court in that case we have further considered the matters presented by the record in this case and find that the questions presented and the facts disclosed by the testimony pertinent thereto are in substance so nearly identical with those in the Wilmington Case that we are convinced that no enforceable order of relief could be predicated on the facts of the present case. We, therefore, deem that it is in effect controlled by the decision of the court referred to. In this view of the matter it seems unnecessary to present a more detailed statement of the facts. It follows that the complaint must be dismissed.

Nos. 677, 678, 679, 680.

IN THE MATTER OF CLASS AND COMMODITY RATES FROM ST. LOUIS TO TEXAS COMMON POINTS IN FORCE OVER THE LINES OF THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; TEXAS AND PACIFIC RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY; INTERNATIONAL AND GREAT NORTHERN RAILROAD COMPANY; ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; GULF, COLORADO AND SANTA FE RAILWAY COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; and CHICAGO, ROCK ISLAND AND TEXAS RAILWAY COMPANY.

Decided August 16, 1905.

Rates in force on freight articles from St. Louis, Mo., to Texas common points prior to March 15, 1903, afforded reasonable compensation to the carriers, and as they had been in effect for a long period, and the material advances of such rates on that date were made through concerted action of the carriers, justification for the advances should be clearly shown; but this is a general investigation, in which no

complainant is demanding relief from some particular rate, and no particular rates have been investigated, and it does appear, moreover, that the financial condition of the respondents, especially those operating in Texas, is not favorable. While impressed with the belief that these advances in rates are improper, the Commission does not feel warranted in making an order condemning such advances in this proceeding.

S. H. Cowan and *P. J. Farrell* for the Commission.

James Hagerman and *Joseph M. Bryson* for the Missouri, Kansas & Texas Railway Company and the Missouri, Kansas & Texas Railway Company of Texas.

J. G. Egan for the St. Louis & San Francisco Railroad Company.

M. L. Clardy for the Missouri Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company.

T. J. Freeman for the Texas & Pacific Railway Company.

N. A. Stedman for the International & Great Northern Railroad Company.

Robert Dunlap for the Atchison, Topeka & Santa Fe Railway Company and the Gulf, Colorado & Santa Fe Railway Company.

R. A. Jackson for the Chicago, Rock Island & Pacific Railway Company.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

On March 15, 1903, lines leading from St. Louis to Texas Common Points put into effect a general advance in rates. This advance applied to all class rates and to most commodity rates. The class rates as so advanced were higher than those in effect when rates were first filed with the Commission in 1887 and higher, with minor exceptions, than they had been at any time since, and this was also true of many commodity rates.

This advance applied not only from St. Louis but also from Kansas City and other points whose rates bear a certain relation to the St. Louis rate and operated to materially increase

the cost of transportation from all the middle west into most of Texas. It is familiar knowledge that since 1892 no new trunk lines have been constructed from these gateways into Texas Common Point territory. It is equally well known that in few portions of the United States has there been a larger growth of population or a greater development of resources than in the region through which and into which this traffic moves. Since these causes generally operate, and should operate to reduce rather than to advance freight rates the situation presented by this advance seemed to be significant enough to demand some investigation upon the part of the Commission in the discharge of its duty to keep informed touching railroad operations, and also its further duty to enforce the requirement of the Act that rates shall be just and reasonable. Proceedings of inquiry were, therefore, instituted against the various lines leading from St. Louis to Texas and the southwest to which subsequently were added the lines leading from Kansas City to the same points.

The Commission, deeming the matter of sufficient general importance, employed counsel to prepare and conduct the investigation. The respondents filed answers stating at length the reasons for the advances in question, and subsequently a great amount of testimony was taken and the questions raised elaborately argued.

While there is some difference in statement upon the part of the different carriers involved the reasons given for making these advances all come in substance to the same point, and may be reduced to two general grounds. First, it is alleged that the cost of labor, materials, and every thing which enters into the construction and operation of a railroad has materially increased. Secondly, it is said that the railways are entitled to a share in the general prosperity of recent years.

It should be noted that these advances are of general application. This is not a case where the rate upon some single commodity has been increased for the reason that it was too low in comparison with other rates, nor because commercial or traffic conditions justified that particular advance. The sole excuse

is a desire to obtain additional revenue and the only question is the propriety of an increase for that purpose.

Many of the railways stated in their answers that there had been and gave figures tending to show a most remarkable increase in the cost of those supplies and materials which enter into the construction, maintenance and operation of railroads. It is evident that a comparison between the panic prices of 1897 and the inflated prices of 1903 would produce startling results of this nature and it is equally evident that such comparisons are utterly worthless for determining a legitimate basis for freight rates. In ordĕr to obtain a more just notion of the history of these prices and their effect upon railroad operations the respondents were required to state the prices of supplies and materials as shown by actual transactions for the years 1892, 1896, 1902 and 1903. In addition to this the purchasing agents, the auditors and the operating officers of the respondents were in many cases examined as well as dealers in these articles involved.

The articles which a railroad company has occasion to buy are very numerous. Some of these are extensively used, others only in limited quantity. The lists furnished by some of the respondents show prices of a great number of different items and the course of these different prices is by no means uniform among the various items. Evidently no general average can be constructed which is reliable without knowing the quantity which is used of each article. An advance in the price of coal would be of vital consequence to a railway and would be in no wise offset by a corresponding decline in feather dusters. While, however, it is impossible to reach any mathematically correct conclusion it is possible from an examination of these figures and this testimony to affirm with confidence certain general facts.

Probably the three most important items which enter into the maintenance and operation of a railroad are steel rails, ties and fuel. As illustrating the history of the prices of these articles we give below the statement of the Gulf, Colorado & Santa Fe, showing the average prices paid for the years in question, the rails and coal by the ton and the ties by the piece.

For the year ending June 30.

	Rails	Ties	Coal.
1892	$41.19	.434	3.43
1896	30.28	.325	3.09
1902	30.81	.398	2.57
1903	31.53	.443	2.01

The above table differs from corresponding information furnished by most of the respondents in that it shows a decline in the price of fuel from 1902 to 1903. This is probably due to the substitution of oil for coal on its Texas lines. Generally the cost of fuel to the respondent carriers increased from 1902 to 1903; otherwise the table is fairly representative of the various lines which are parties to this inquiry. Generally speaking the cost of steel rails, including the item of freight, was greater in 1892 than in 1902. The cost of ties was somewhat greater in 1902 than ten years before. It seems to be true that the price of all lumber, and this is a very important item in the operation of a railway, had somewhat increased in those ten years, the amount of the increase depending upon the character of the lumber. The cost of fuel had in the majority of cases substantially declined in the same ten years. Taking all supplies together it is our opinion that these respondents paid no more in 1902 than they had paid in 1892 for the same quantities; in other words that the cost of the materials and supplies which a railroad company has occasion to buy in the maintenance and operation of its railroad was no greater in 1902 than it had been ten years before. From 1892 to 1897 there was a sharp decline in prices and from 1897 to 1902 a corresponding advance. There had been a further advance between 1902 and 1903, but these advances had been more than offset by reductions occurring in the latter part of 1903 and the early part of 1904 when most of the testimony upon this subject was taken.

One of the most important items which enter into the expense of railroad operation is the cost of equipment. For the purpose of arriving at some satisfactory opinion on this subject the Commission examined in this proceeding the first vice president of the American Car and Foundry Company and in an-

other similar proceeding the general manager of the construction department of the Pullman Company. The testimony of these gentlemen agrees.

The price of cars depends on financial conditions as well as the cost of producing the car itself. When it is possible to finance large purchases of equipment to good advantage railroads buy freely creating a good demand and, therefore, a high price. Upon the other hand in times of financial depression when it is difficult to borrow large sums of money purchases of cars fall off thereby lessening the demand and forcing down the price. It was said that the same car in February, 1904, could be bought for 15 per cent less than in July, 1903, largely for the reason above indicated.

The cost of building a car also of necessity varies with the changes in cost of materials and labor which have been about the same in the car shop as in other railroad operations. What should be especially noted, and what largely accounts for the apparent great increase in price is the fact that the car of today differs radically from the car of ten or twelve years ago. The capacity of the modern car is much greater. The coal car of 1892 which sold for $600 had a capacity of 25 or 30 tons. The coal car of 1902 which sold for $1,100 was a steel car with a capacity of 50 tons.

This increase in capacity has been secured without a corresponding increase in the weight of the car. Taking the increase in capacity at 100 it was said that the corresponding increase in weight would be approximately 75. This adds, as will be more fully explained later, to the efficiency of the car by increasing the amount of paying freight in comparison with the dead weight. There are also many improvements in the construction of cars which add to the ease and convenience of operation but which also add something to the cost of the car.

From all this testimony we conclude that, while freight cars by the car cost much more in 1902 than 1892, if estimated in unit of capacity and still more in unit of efficiency the cost had not materially increased. The price declined between 1892 and 1897 and advanced again up to 1902. In February, 1904, it was somewhat less than in 1902.

Freight cars are today equipped with air brakes and automatic couplers and it was said that this added from $60 to $70 to the cost of each car. In what is above said as to the price of cars the cost of this equipment is not included. Whether in actual use these appliances are worth to the railway company what they cost is a disputed question.

The evidence as to the cost of locomotives is less complete than in case of cars. Engines like cars are of much greater capacity today than formerly, and they are also equipped with many improved devices which are supposed to add to the value in actual operation. In units of tractive power the difference is less than when given by the engine, even when so measured we are inclined to think that they were distinctly higher in 1902 than in 1892. The ownership of the various locomotive works of the United States has been so adjusted within the last few years that "suicidal competition" no longer exists and this fact is easily observed in the price which railways are compelled to pay.

Much the largest single item of expense in the maintenance and operation of a railroad is labor and the ground urged by railways with most confidence in justification of these advances is a corresponding increase in the price of labor. Our information upon this subject is more satisfactory than that touching the cost of materials and supplies for the reason that since 1887 railways have made statistical returns to the Commission showing the wages paid the different classes of labor in their employ. From these returns taken in connection with the testimony in the case an opinion can be reached with much confidence.

Comparing 1892 with 1902 we find that the rate of wages was not greatly different. With some classes of employees there had been a reduction with other classes an advance. On the whole the average rate per diem paid railway employees of all classes had somewhat increased.

Labor is apparently the commodity whose price falls and advances last. Certainly this was true with reference to railroad operations from 1897 to 1904. Advances in wages up to 1902 had been nothing like the corresponding advances in supplies and materials, and nothing like the increase in the gross or net

revenues of the railways. In the years 1902 and 1903 very material advances in the price of labor were made. These were not all at the same time nor was the amount by any means the same in case of the different classes. We are inclined to think that the wages paid by the railroads under investigation rose during these two years something like 10 per cent.

How great is the significance of this fact will be realized when it is remembered that the Gulf, Colorado & Santa Fe paid out for labor during the year 1903, $3,450,853 and that the labor payments of the Atchison, Topeka & Santa Fe during the same period aggregated $14,672,185. This increase therefore means to the Atchison system an addition of $1,812,303 to its operating expenses, and a corresponding reduction from its net income.

The railroads insist that this advance in the per diem wages does not represent the actual increase in the cost of the labor itself for the reason that owing to the regulations and requirements of the various labor organizations that labor is less efficient. For illustration, a station agent formerly did the work of a telegraph operator whereas today two persons must be employed. Without expressing any opinion as to the reasonableness of these regulations and requirements we are inclined to think that the claim is well taken and that there has been for various reasons a loss, as compared with ten or twelve years ago, in the quantity of work which a day's labor means.

Upon the other hand it must be carefully observed that owing to the introduction of certain economies in railroad operation a given quantity of work produces a much greater result. These different economies come mostly to the same end, the handling of a greater amount of paying freight in a train.

We have already seen that there has been a great increase in the capacity of the modern car. The car in use today will load from 25 to 75 per cent heavier than the car actually in use a dozen years ago. Here are two sources of saving; the single car can be maintained and operated more cheaply than two cars of the same combined weight, and there is also a saving in that the dead weight in case of the single car is less in proportion to the paying load.

The whole system of operation has changed. Formerly a certain number of cars were assigned to a certain haul. To-day every engine is given its rated capacity for a certain character of freight and is not sent out, so far as possible, unless it is loaded up to that capacity. This results in increasing the train load while the number of trainmen remains the same.

The reduction in grades, which has proceeded extensively upon most of the respondent lines accomplishes the same purpose. The importance of this is well shown by the testimony of the general superintendent of the St. Louis Southwestern Railway who stated that one of the standard engines of that company would haul from Gray's Point to Pine Bluff 1,800 tons, from Pine Bluff to Texarkana 950 tons, from Texarkana to Fort Worth 740 tons, and from Mount Pleasant to Tyler 480 tons. It must be remembered that the expense of operating the train from Gray's Point to Pine Bluff is not greater and probably less than from Mount Pleasant to Tyler, although the quantity of paying freight hauled is nearly four times as great.

All this has required enormous outlays in putting the road-way into proper shape and buying modern equipment, and this must be taken into account in an estimate of the importance of these economies and their effect upon rates; but at present we are concerned simply with the cost of labor. Just how great their effect here has been can only be determined by inquiring what it costs for the labor to move a ton of freight one mile to-day as compared with former years. The following tables have been compiled from the statistics of the Commission and are inserted as instructive upon this point.

TABLE NO. 1.

Average Number of Tons Carried 1 Mile Per Day's Work Performed by Railway Employees (Excluding General Officers), and Average Daily Compensation for Years Named Ending June 30.

Name of Road.	Based on total number of days worked (excluding general officers.)		Based on days worked assigned to conducting transportation.	
	Ton-miles per day's work.	Average daily compensation.	Ton-miles per day's work.	Average daily compensation.
Missouri, Kansas and Texas Railway:				
1892	319	$1.91	729	$2.25
1896	388	2.07	917	2.37
1902	484	2.17	1,147	2.49
1903	441	2.20	1,072	2.57
1904	345	2.09	936	2.52
St. Louis Southwestern Railway:				
1892	292	1.88	606	2.10
1896	344	1.95	738	2.16
1902	321	1.79	920	1.98
1903	306	1.88	890	2.12
1904	381	1.97	818	2.10
St. Louis and San Francisco Railroad:				
1892	302	1.82	654	2.16
1896	293	1.84	572	2.11
1902	378	1.99	838	2.35
1903	351	2.00	731	2.29
1904	350	1.96	851	2.47
Missouri Pacific Railway:				
1892	300	1.80	746	2.13
1896	312	1.88	615	2.10
1902	359	1.91	813	2.17
1903	394	2.01	881	2.31
1904	344	2.00	771	2.31
St. Louis, Iron Mountain and Southern Ry.:				
1892	324	1.85	838	2.29
1896	401	1.86	901	2.17
1902	492	1.92	1,187	2.21
1903	516	1.97	1,271	2.26
1904	467	1.99	1,072	2.28
Texas and Pacific Railway:				
1892	279	2.11	710	2.73
1896	312	2.06	828	2.57
1902	336	1.90	1,163	2.94
1903	306	1.91	876	2.37
1904	298	2.01	676	2.30
International and Great Northern Railroad:				
1892	203	2.01	485	2.27
1896	222	2.00	458	2.19
1902	358	2.11	984	2.79
1903	341	2.12	958	2.90
1904	341	2.11	858	2.64

TABLE NO. 1.—Continued.

Average Number of Tons Carried 1 Mile Per Day's Work Performed by Railway Employees (Excluding General Officers), and Average Daily Compensation for Years Named Ending June 30.

Name of Road.	Based on total number of days worked (excluding general officers).		Based on days worked assigned to conducting transportation.	
	Ton-miles per day's work.	Average daily compensation.	Ton-miles per day's work.	Average daily compensation.
Gulf, Colorado and Santa Fe Railway:				
1892	197	$2.00	527	$2.40
1896	231	2.04	645	2.56
1902	408	2.09	1,122	2.65
1903	425	2.05	1,269	2.60
1904	395	2.15	1,100	2.69
Atchison, Topeka and Santa Fe Railway:				
1892	...	...	.....	...
1896	316	1.99	826	2.47
1902	482	1.99	1,158	2.35
1903	415	2.06	1,199	2.56
1904	431	2.15	1,057	2.61
Chicago, Rock Island and Texas Railway:				
1892[1]	...	...	.....	...
1896	148	1.77	409	2.21
1902	388	1.97	1,056	2.26
1903	452	2.03	1,068	2.20
1904[2]	...	...	.....	...
Chicago, Rock Island and Pacific Railway:				
1892	304	1.92	744	2.39
1896	344	1.95	825	2.34
1902	402	2.02	989	2.47
1903	366	1.95	799	2.22
1904	375	2.11	970	2.42

[1] No report.
[2] Forms a part of the Chicago, Rock Island & Gulf Ry.

TABLE NO. 2.

Average Number of Tons Carried One Mile Per Dollar of Compensation Paid to Railway Employees (Excluding General Officers), and Average Daily Compensation for Years Named Ending June 30.

Name of Road.	Based on total compensation (excluding general officers).		Based on compensation assigned to conducting transportation.	
	Ton-miles per dollar.	Average daily compensation.	Ton-miles per dollar.	Average daily compensation.
Missouri, Kansas and Texas Railway:				
1892	167	$1.91	324	$2.25
1896	187	2.07	387	2.37
1902	222	2.17	461	2.49
1903	201	2.20	416	2.57
1904	165	2.09	372	2.52
St. Louis Southwestern Railway:				
1892	155	1.88	289	2.10
1896	176	1.95	342	2.16
1902	179	1.79	465	1.98
1903	163	1.88	419	2.12
1904	193	1.97	390	2.10
St. Louis and San Francisco Railroad:				
1892	166	1.82	303	2.16
1896	159	1.84	271	2.11
1902	189	1.99	357	2.35
1903	175	2.00	319	2.29
1904	179	1.96	345	2.47
Missouri Pacific Railway:				
1892	167	1.80	350	2.13
1896	666	1.88	293	2.10
1902	188	1.91	376	2.17
1903	196	2.01	381	2.31
1904	172	2.00	333	2.31
St. Louis, Iron Mountain and Southern Ry.:				
1892	174	1.85	367	2.29
1896	215	1.86	415	2.17
1902	256	1.92	537	2.21
1903	262	1.97	563	2.26
1904	235	1.99	470	2.28
Texas and Pacific Railway:				
1892	132	2.11	260	2.73
1896	152	2.06	322	2.57
1902	176	1.90	395	2.94
1903	160	1.91	370	2.37
1904	148	2.01	293	2.30
International and Great Northern Railroad:				
1892	101	2.01	213	2.27
1896	111	2.00	210	2.19
1902	170	2.11	352	2.79
1903	161	2.12	330	2.90
1904	161	2.11	325	2.64

TABLE NO. 2—Continued.

Average Number of Tons Carried One Mile Per Dollar of Compensation Paid to Railway Employees (Excluding General Officers), and Average Daily Compensation for Years Named Ending June 30.

Name of road.	Based on total compensation (excluding general officers). Ton-miles per dollar.	Based on total compensation (excluding general officers). Average daily compensation.	Based on compensation assigned to conducting transportation. Ton-miles per dollar.	Based on compensation assigned to conducting transportation. Average daily compensation.
Gulf, Colorado and Santa Fe Railway:				
1892	98	$2.00	219	$2.49
1896	113	2.04	252	2.56
1902	195	2.09	423	2.65
1903	207	2.05	488	2.60
1904	183	2.15	409	2.69
Atchison, Topeka and Santa Fe Railway:				
1892	...	...	.....	...
1896	159	1.99	334	2.47
1902	242	1.99	492	2.35
1903	202	2.06	468	2.56
1904	201	2.15	405	2.61
Chicago, Rock Island and Texas Railway:				
1892[1]	...	...	.....	...
1896	84	1.77	185	2.21
1902	197	1.97	467	2.26
1903	223	2.03	485	2.20
1904[2]	...	...	....	...
Chicago, Rock Island and Pacific Railway:				
1892	158	1.92	312	2.39
1896	177	1.95	352	2.34
1902	198	2.02	401	2.47
1903	188	1.95	361	2.22
1904	178	2.11	401	2.42

[1] No report.
[2] Forms a part of the Chicago, Rock Island & Gulf Ry.

The first of these tables treats a day's work as the unit and inquires how many miles a single day's work on the average moves a ton of freight. General officers are excluded in the first half of the first table but all other employees are embraced, while in the second half of that table only those employees who are engaged in conducting transportation are considered. In the second table the computation is made in the same way save that a dollar is made the unit. This table shows how many tons were moved one mile by the expenditure of $1.00 in labor during the years mentioned. An examination of these tables shows that while the average per diem cost of labor has increased, $1.00 expended in labor would move more freight in 1902 and 1903 than it had at any time previously. The showing for 1904 indicates a slight decrease as compared with 1903.

It should also be noted that these computations are somewhat misleading for the purposes of comparison for this reason. For the last eight years these respondents have for the most part been making upon their lines extensive improvements. This subject will be referred to later and is only mentioned here to call attention to the fact that the compensation paid laborers engaged in the making of these improvements is embraced in these conclusions. The wages paid employees who are reducing a grade, laying new steel, putting on new ballast, or making any other addition to the property, unless the work is being done by contract, enter into the amount paid for labor and increase the total number of days work. If this element could be eliminated from the computation the showing would be somewhat more favorable in recent years.

It must also be borne in mind that the economies to which reference has been made are not altogether, nor perhaps mainly responsible for the apparent increased efficiency of labor. Another and most important factor enters into this result.

When the last of this testimony was taken the rate on iron articles from Pittsburg to Hong Kong was 60 cents per hundred and of this through rate the rail carrier to the Pacific Coast obtained as its division 40 cents. At the same time the local rate from Pittsburg to Ash Fork on the Santa Fe was $2 per hundred pounds. The freight for Hong Kong, if ship-

ped via the Santa Fe, moved through Ash Fork and possibly in the same train with similar freight for that destination. The carriers justify this great disparity between the rate to interior points and the rate to Pacific Coast terminals by the claim that the rate to the interior point is reasonable while that to the coast is fixed by competition. When asked how a rate of 40 cents to San Francisco can be remunerative if a rate of 200 cents to Ash Fork 800 miles nearer than San Francisco is reasonable they answer, that when once the railroad and the facilities for operation have been provided additional freight can be taken at a profit at very much less than what is reasonable for local traffic. The roadway must be maintained, stations must be kept up, many of the officers must be employed and paid whether the business done is much or little.

Without intending to suggest that any such disparity as that referred to can be just or reasonable, and without affirming that the increase of tonnage does not and must not increase those expenses which are assumed to be fixed, it is certainly a fundamental fact that traffic can be handled more cheaply over a given railroad in large quantities than in small quantities. To this there are exceptions. It may happen, and it has happened that too much freight is offered so that its very abundance by producing congestion of traffic has operated to increase the expense of handling it; but all that is temporary in its nature. Increase in the amount of traffic should operate, other things being equal, to reduce, not to advance freight rates. Increase in traffic, other things being equal, should and does operate, the rate remaining the same, to increase the net revenues of the carriers.

Now within the last seven years there has been upon these lines in question in common with most other railways in the United States a most remarkable increase in the amount of traffic handled and this increase alone, if handled under favorable conditions, would enormously increase the net returns to these companies and the value of the properties. Below is given a table showing in case of the various respondents the number of tons per train mile and the number of tons per loaded car mile for the years named, together with the percentage of empty car mileage and the passenger train and car mileage.

TABLE NO. 3.

Showing volume and density of traffic, economies in car and train loading for the years ending June 30, 1892, 1896, 1900, 1901, 1902, 1903 and 1904, for all the respondents.

NAME OF ROAD.	Number tons carried 1 mile per mile of road	Number tons per train mile	Number tons per loaded car mile	Average distance haul of 1 ton	Per cent of empty to total car mileage	Passenger car mileage per mile of line[1]	Passenger train mileage per mile of line
	Tons	Tons	Tons	Miles	Per cent.	Miles	Miles
Missouri, Kansas & Texas Railway:							
1892	391,059	126.78	10.17	274.39	34.50	.....	1,258
1896	394,424	149.00	11.00	289.38	35.35	.....	1,440
1900	530,604	197.11	13.06	298.93	31.52	7,297	1,516
1901	576,023	212.20	13.15	267.08	31.06	7,469	1,516
1902	558,684	206.38	14.28	278.54	37.84	7,816	1,523
1903	531,477	211.21	14.45	259.85	35.90	7,973	1,518
1904	426,431	198.70	13.52	236.32	35.61	7,801	1,481
St. Louis Southwestern Railway:							
1892	355,174	89.37	5.41	198.79	24.41	.....	1,004
1896	392,244	195.47	11.54	206.18	23.87	.....	1,129
1900	514,930	267.61	14.39	194.88	24.58	5,528	1,142
1901	534,443	278.61	14.61	191.93	25.47	6,791	1,270
1902	578,298	314.72	15.84	192.64	23.66	6,958	1.297
1903	584,009	347.36	16.30	195.89	24.88	6,998	1,337
1904	577,717	348.81	16.45	187.57	28.60	8,625	1,622
St. Louis & San Francisco Railroad:							
1892	292,756	51.21	3.65	188.77	28.46	.....	1,251
1896	264,560	132.39	9.49	173.61	32.03	.....	1,455
1900	372,064	154.06	12.59	182.05	35.48	8,405	1,657
1901	401,394	186.77	13.61	195.83	32.88	8,120	1,614
1902	516,173	190.44	14.63	193.66	34.56	8,300	1,650
1903	476,956	198.09	15.06	189.92	33.06	8,261	1,620
1904	476,630	200.85	15.88	177.49	33.18	8,163	1,615

TABLE NO. 3.—continued.

Showing volume and density of traffic, economies in car and train loading for the years ending June 30, 1892, 1896, 1900, 1901, 1902, 1903 and 1904, for all the respondents.

NAME OF ROAD	Number tons carried 1 mile per mile of road	Number tons per train mile	Number tons per loaded car mile	Average distance haul of 1 ton	Per cent of empty to total car mileage	Passenger car mileage per mile of line[1]	Passenger train mileage per mile of line
	To	Tons	Tons	Miles	Per cent.	Miles	Miles
Missouri Pacific Railway:							
1892	316,588	169.10	11.60	190.10	25.83	.....	1,148
1896	253,527	153.36	10.79	173.31	28.45	.....	1,113
1900	371,713	189.72	13.04	179.16	25.07	5,741	1,161
1901	415,412	220.69	14.74	186.59	25.44	5,808	1,191
1902	414,669	216.09	14.47	180.43	24.05	6,465	1,319
1903	472,915	251.08	15.79	179.70	24.76	6,887	1,378
1904	472,727	234.43	15.42	179.60	25.11	7,417	1,511
St. Louis, Iron Mountain & Southern Railway:							
1892	464,465	172.20	10.80	230.06	23.01	.....	1,423
1896	489,160	195.86	11.25	238.48	26.81	.....	1,571
1900	786,105	250.48	13.99	239.12	21.69	9,725	1,557
1901	842,373	288.02	14.71	239.99	21.11	9,973	1,668
1902	970,693	319.50	15.61	244.95	21.37	10,783	1,823
1903	1,096,792	373.97	16.55	257.75	20.74	10,922	1,794
1904	884,368	357.34	16.30	248.45	21.12	10,256	1,723
Texas & Pacific Railway:							
1892	258,358	131.03	9.17	250.60	27.65	.....	1,249
1896	287,560	159.20	10.66	227.74	27.89	.....	1,339
1900	407,274	175.04	12.86	224.23	34.94	7,089	1,374
1901	518,400	191.26	13.50	238.06	34.47	7,397	1,436
1902	466,596	191.18	13.63	211.89	35.25	7,364	1,427
1903	482,223	201.27	14.20	196.30	32.64	7,524	1,434
1904	419,978	201.82	13.71	206.67	33.15	7,797	1,479

International & Great Northern Railroad:							
1892	235,148	116.76	9.46	109.97	33.88	.....	1,251
1896	207,356	118.30	9.61	174.73	33.95	.....	1,229
1900	320,768	165.23	11.60	196.65	32.30	7,036	1,311
1901	358,923	194.82	12.39	190.13	30.41	7,003	1,477
1902	330,807	196.38	13.04	194.47	30.88	7,136	1,474
1903	334,826	203.37	13.73	184.31	32.35	7,260	1,415
1904	318,144	208.87	13.65	193.84	32.88	6,442	1,298
Gulf, Colorado & Santa Fe Railway:							
1892	256,583	95.84	8.31	173.56	31.05	.....	963
1896	250,052	100.86	9.69	182.68	33.54	.....	1,312
1900	405,366	201.19	13.24	242.72	27.96	5,907	1,239
1901	413,565	216.63	12.53	239.07	30.61	6,476	1,236
1902	455,283	218.20	13.46	257.29	34.35	6,768	1,254
1903	597,721	257.20	14.95	280.82	31.51	6,798	1,263
1904	516,999	246.91	14.06	254.68	31.08	7,207	1,274
Atchison, Topeka & Santa Fe Railway:							
1892	......	......	.....	......	.....	.....	.....
1896	311,197	126.00	10.00	254.85	28.99	.....	1,283
1900	506,099	215.78	12.84	301.72	27.87	7,953	1,330
1901	555,076	237.72	13.01	299.45	28.58	8,772	1,438
1902	585,683	243.45	13.81	309.23	30.26	9,729	1,529
1903	615,827	261.78	14.03	300.54	28.88	10,021	1,544
1904	589,216	249.23	13.71	308.11	29.91	10,257	1,507
Chicago, Rock Island & Texas Railway:							
1892[3]	......	......	.....	......	.....	.....	.....
1896	159,131	118.08	9.26	72.63	38.36	.....	1,455
1900	398,557	154.65	14.23	84.27	29.24	5,155	1,152
1901	512,951	171.74	16.17	82.80	28.07	6,001	1,190
1902	562,231	162.21	15.08	83.36	28.69	7,135	1,242
1903	590,598	162.06	17.05	87.37	36.89	6,069	1,003
1904[3]	......	......	.....	......	.....	.....	.....

TABLE NO. 8.—continued.

Showing volume and density of traffic, economies in car and train loading for the years ending June 30, 1892, 1896, 1900, 1901, 1902, 1903 and 1904, for all the respondents.

NAME OF ROAD.	Number tons carried 1 mile per mile of road	Number tons per train mile	Number tons per loaded car mile	Average distance haul of 1 ton	Per cent of empty to total car mileage	Passenger car mileage per mile of line[1]	Passenger train mileage per mile of line
	Tons	Tons	Tons	Miles	Per cent	Miles	Miles
Chicago, Rock Island & Pacific Railway:							
1892	341,933	120.15	9.18	197.00	24.22	.....	1,867
1896	310,804	136.89	10.23	196.99	25.64	.....	1,597
1900	455,587	181.84	11.99	216.02	25.58	9,045	1,723
1901	484,437	185.04	12.12	232.00	26.21	9,640	1,844
1902	468,773	184.06	11.93	220.67	29.50	10,000	1,961
1903	445,905	187.79	12.91	231.44	32.19	9,469	1,917
1904	454,928	221.71	13.95	241.20	32.59	9,295	1,829

[1]Passenger car mileage not reported in 1892 and 1896.
[2]No report.
[3]Forms a part of the Chicago, Rock Island & Gulf Ry.

This table is most instructive. It shows an increase of from 50 to 100 per cent in tonnage, an increase of from 50 to 300 per cent in the number of tons per train mile and an increase of from 50 to 300 per cent in the carloading of the various respondents.

It is evident that the first justification of the carriers for these advances, that increased cost of operation due to the increased price of supplies and labor, is not necessarily a valid one. Taking the item of labor upon which most stress is laid it conclusively appears that $1.00 will transport more tons one mile today than it would six years ago when labor was cheaper than today, or to put the proposition in another way, that, having reference to the item of labor, the cost of transporting a ton of freight a given distance is less today than six years ago and, therefore, that the profit at the same rate is greater now than formerly, while in addition the number of tons transported is greatly increased. The adoption of new economies in operation and the increase in tonnage have been such as to much more than offset the effect of any advance in the materials used or the cost of the labor employed.

But this is by no means conclusive against these advances. A railway should earn more in times of prosperity than during periods of financial depression. Whether rates are fairly adjusted must be determined largely by the net result. As bearing upon this question the following table may be consulted. It shows with respect to each of the respondent carriers the mileage operated, the capitalization, gross earnings, operating expenses, net earnings, cost of maintenance of way, cost of maintenance of equipment, cost of conducting transportation, and general expenses, all per mile of line, together with the average net receipts per ton mile.

TABLE NO. 4.

NAME OF ROAD		Mileage			Capitalization			Gross earnings per mile of line	Operating expenses per mile of line	Net earnings per mile of line	Per cent. of operating expenses to gross earnings.	Revenue per ton per mile in cents	Maintenance of way and structures per mile of line	Maintenance of equipment per mile of line	Total per mile of line	Conducting transportation per mile of line	General expenses per mile of line
		Owned	Leased	Total mileage operated	Funded debt per mile of line	Capital stock per mile of line	Total per mile of line										
Missouri, Kansas and Texas Railway	1892	a1,523	201	1,670	$41,073	$40,567	$81,640	$5,656	$4,078	$1,578	72.10	1.121	$ 978	$ 391	$1,369	$2,122	$587
	1901	2,233	247	2,480	34,172	32,137	66,309	6,808	4,931	1,877	72.43	.927	1,243	601	1,844	2,767	320
	1902	2,277	278	2,555	34,540	31,875	66,415	6,562	4,762	1,800	72.57	.904	1,058	599	1,657	2,794	311
	1903	2,308	405	2,713	34,343	31,507	65,850	6,616	4,661	1,955	70.44	.959	1,069	635	1,704	2,658	299
	1904	2,748	294	3,042	32,169	29,192	61,361	6,160	4,511	1,649	73.23	1.065	933	559	1,492	2,730	289
St. Louis Southwestern Railway	1892	581	......	581	48,575	62,736	111,311	5,249	3,755	1,494	71.54	1.181	1,021	500	1,521	1,716	518
	1901	b618	16	628	52,992	62,639	115,631	6,897	3,953	2,944	57.31	1.013	685	579	1,264	2,252	437
	1902	b618	16	628	c37,324	62,639	99,963	7,029	4,451	2,578	63.32	.969	980	742	1,722	2,367	302
	1903	b618	16	628	c39,526	59,109	98,635	7,187	4,423	2,764	61.53	.967	1,007	702	1,709	2,228	486
	1904	b618	20	632	c40,881	59,071	99,952	7,839	4,728	3,111	60.32	1.030	998	841	1,839	2,546	343
St. Louis and San Francisco Railway	1892	992	336	1,328	40,950	26,560	d67,510	5,310	3,125	2,185	58.85	1.291	562	529	1,091	1,578	456
	1901	1,592	116	1,708	27,273	29,344	e56,617	5,958	3,467	2,491	58.19	1.057	771	561	1,332	1,958	177
	1902	1,592	1,303	2,895	37,987	31,412	69,399	6,791	4,243	2,548	62.48	.947	938	690	1,628	2,421	194
	1903	2,361	1,008	3,369	33,600	21,176	54,776	6,681	4,325	2,356	64.73	.995	922	715	1,637	2,471	217
	1904	2,204	1,862	4,066	32,417	17,266	k49,683	6,570	4,308	2,262	65.57	.959	755	840	1,595	2,499	214
Missouri Pacific Railway	1892	1,060	2,154	3,214	48,462	44,746	93,208	4,381	3,191	1,190	72.83	.943	756	547	1,303	1,662	226
	1901	1,061	2,319	3,380	50,926	62,758	113,684	5,044	3,392	1,652	67.26	.863	863	622	1,485	1,793	114
	1902	1,110	2,355	3,465	48,670	68,846	117,516	5,232	3,693	1,539	70.58	.884	905	700	1,605	1,980	108
	1903	1,134	2,354	3,488	52,755	68,600	121,355	5,637	3,845	1,792	68.21	.829	876	720	1,596	2,134	115
	1904	1,152	2,339	3,491	57,023	67,537	124,560	6,035	4,472	1,563	74.10	.884	804	938	1,742	2,613	117
St. Louis, Iron Mountain & Southern Ry	1892	1,237	533	1,770	33,253	20,852	54,105	6,558	4,585	1,973	69.90	1.057	1,127	766	1,893	2,373	319
	1901	1,429	472	1,901	47,832	18,053	65,885	8,604	4,885	3,719	56.78	.783	834	826	1,660	3,050	175
	1902	1,429	345	1,774	49,425	18,053	67,478	9,751	5,937	3,814	60.90	.786	1,201	911	2,112	3,615	210
	1903	1,470	345	1,815	59,801	17,542	77,343	10,269	6,417	3,852	62.49	.733	1,247	1,032	2,279	3,902	236
	1904	1,821	410	2,231	50,646	14,163	64,809	8,985	6,212	2,773	69.13	.786	1,145	1,049	2,194	3,832	186

Texas and Pacific Ry.	1892	1,388	111	1,499	$39,178	$27,884	$67,062	$4,744	$3,851	$ 893	81.19	1.226	$ 965	$ 510	$1,475	$2,093	$283
	1901	1,572	93	1,665	35,506	24,656	60,162	7,099	4,505	2,594	63.45	.993	1,004	758	1,762	2,553	190
	1902	1,615	93	1,708	35,391	24,006	59,397	6,733	4,814	1,919	71.49	1.016	1,116	897	2,013	2,595	206
	1903	1,612	92	1,704	36,291	24,049	60,340	6,622	4,611	2,011	69.64	1.000	948	880	1,828	2,580	203
	1904	1,734	92	1,826	34,097	22,360	56,457	6,473	4,238	2,235	65.47	1.089	740	693	1,433	2,593	212
International & Great Northern R. R.	1892	775	......	775	19,355	12,581	31,936	4,602	3,851	751	83.68	1.351	1,258	559	1,817	1,793	241
	1901	838	48	886	24,737	11,649	36,386	5,928	4,306	1,622	72.64	1.192	1,175	634	1,809	2,313	184
	1902	957	50	1,007	23,168	10,197	33,365	5,355	3,994	1,361	74.58	1.145	1,041	605	1,646	2,153	195
	1903	1,051	54	1,105	23,431	9,281	32,712	5,286	3,997	1,289	75.62	1.130	967	670	1,637	2,175	185
	1904	1,106	54	1,160	23,191	8,820	32,011	4,881	3,732	1,149	76.47	1.110	692	630	1,322	2,219	191
Gulf, Colorado and Santa Fe Ry.	1892	1,058	......	1,058	20,000	4,310	24,310	4,783	4,513	270	94.36	1.440	833	695	1,528	2,686	299
	1901	1,089	39	1,128	19,566	4,187	23,753	6,374	4,398	1,976	69.01	1.167	1,031	750	1,781	2,397	220
	1902	1,139	39	1,178	18,707	4,003	22,710	6,186	4,598	1,588	74.33	1.020	964	870	1,834	2,559	205
	1903	1,140	63	1,203	18,687	3,999	22,686	6,702	5,524	1,178	82.42	.869	1,505	1,163	2,668	2,631	225
	1904	1,150	179	1,329	18,532	3,966	22,498	6,587	5,187	1,400	78.75	.960	1,007	1,235	2,242	2,725	220
Chicago, Rock Island and Pacific Ry.	1892	2,744	730	3,474	19,546	16,822	36,368	5,497	3,727	1,770	67.81	1.055	861	559	1,420	1,885	422
	1901	3,128	691	3,819	21,330	15,986	37,316	6,912	4,532	2,380	65.56	1.000	1,275	806	2,081	2,282	169
	1902	3,219	755	3,974	21,969	18,636	40,605	7,292	4,530	2,762	62.12	1.034	1,185	680	1,865	2,497	168
	1903	3,245	2,334	5,579	22,104	23,059	45,163	6,601	4,190	2,411	63.48	1.013	923	626	1,549	2,459	182
	1904	4,922	1,839	6,761	23,031	15,237	38,268	6,385	4,655	1,730	72.90	.944	909	751	1,660	2,783	212
Atchison, Topeka and Santa Fe Railway	1892	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......	......
	1901	4,755	63	4,818	25,684	30,107	f55,791	7,341	g4,138	3,203	56.36	.937	793	796	1,589	2,198	164
	1902	4,670	174	4,844	29,248	29,849	f59,097	7,784	4,159	3,625	53.43	.926	729	981	1,710	2,268	181
	1903	h4,668	211	4,871	28,818	29,011	f57,829	7,930	4,615	3,315	58.19	.901	1,127	985	2,112	2,320	183
	1904	h4,674	365	5,031	29,490	28,758	f58,248	8,411	5,051	3,360	60.05	.981	1,202	1,056	2,258	2,590	203

a. Includes 54 miles not operated.

b. Includes 6 miles not operated.

c. Basis includes mileage of St. Louis Southwestern Railway Company of Texas.

d. Basis includes 53 miles of proprietary companies.

e. Basis includes 112 miles of proprietary companies.

f. The capital stock and funded debt include issues for the acquisition, by purchase or exchange, of the stocks and bonds of other roads forming part of the system, and the apportionment per mile is made on that basis.

g. Based on a total including a special betterment fund of $900,000.

h. Includes 8 miles not operated.

k. Includes 692 miles of proprietary companies.

While the Missouri Pacific is made a respondent that line does not in fact participate in this traffic and may be disregarded in the discussion. Of the 5,000 miles of line operated by the Atchison, Topeka & Santa Fe only a comparatively few miles are involved in the movement of this traffic and the statistics given with respect to that company are chiefly valuable for purposes of comparison. In a somewhat less degree the same is true of the Chicago, Rock Island & Pacific.

It will be noted that in case of some lines, notably the St. Louis and San Francisco, the mileage has very much increased since 1892. Our understanding is that these increases, where they occur during the years 1901, 1902, 1903, and 1904, are due to new construction, and the tendency of this would be to reduce somewhat both gross and net earnings per mile, since the newly opened lines would not do as much business per mile as the older portions of the system.

An examination of this table shows that gross earnings per mile were in all cases larger in 1903 than in 1892 and where the mileage was identical the increases were large. There has also been a progressive increase in gross earnings in recent years. Net earnings show in all cases an increase, in most cases a substantial increase and in some a large increase.

In attempting, however, to draw a conclusion from these net earnings it must be carefully borne in mind that the amount of the net earnings may be to a very large extent varied according to the policy of the management in directing expenditures in the maintenance of way and equipment and also by the method of bookkeeping adopted. It cannot be assumed because the net earnings shown in one year are somewhat greater or less than those shown in another year, or because the net earnings shown upon one system are greater or less than those upon some other that this correctly reflects the actual net earning capacity of the two systems generally or for the years indicated.

The item of conducting transportation cannot be much modified. Whenever a train moves so much coal must be used and so many men employed at the time of the movement. With maintenance of way and equipment this is not so. A certain amount must be expended to keep the roadbed and other perma-

nent structures and the rolling stock in a going condition, but a certain other amount, although necessary to keep the property good in the long run may be laid out sooner or later according to the will of the management. For example, rails must be relaid but the time of relaying can usually be varied for a considerable period. So in the renewal of a bridge or a culvert there is a leeway of years usually. A car or an engine can be used after good economy would require its abandonment. The building of a station can be postponed almost indefinitely. From these considerations it results that the management can without taking from or adding to the items which are actually needed to keep the property good vary for a particular year or even for a series of years by several hundred dollars per mile the cost of operation and thereby the net results.

In addition to this the amount charged to maintenance may be greatly varied by the manner in which the accounts are kept. A new car is purchased in the place of an old one. It is largely more efficient and more expensive. What part of it shall be charged to maintenance and what part to permanent improvement? So of the replacement of rails, bridges, culverts, depots and whatever enters into the construction and equipment of a railroad. Some railroads carefully separate what is properly maintenance from what is strictly an addition; others are liberal in the making of these distinctions, charging more to maintenance and renewal and less to betterment, while still others charge all improvements against operating expenses.

The general tendency in all parts of the country is to charge more to operation than formerly, and that tendency is perhaps more marked in Texas than elsewhere for the reason that under the stock and bond law of that state no railroad company can issue stocks and bonds in excess of the value put upon its property by the state commission. This law was enacted in 1894 and went into effect in 1895. The valuation of those railroads which had been previously constructed made at that time was in all cases much less than their capitalization, and although since then those railroads have been improved often to the extent of from $4,000 to $8,000 per mile, there is still, with possibly one exception, no case in which the present valuation is sufficient

to authorize an increase of the stocks and bonds; hence no railroad company in Texas can borrow money for the purpose of making permanent improvements unless that debt be carried in some unsecured form. The railroads of that state in 1895 were in poor condition. Since then the increase of traffic and the demands of economical operation have required the virtual reconstruction of most of the principal lines. These improvements have generally been made out of earnings, some times by a direct charge to operating expenses and some times through the income account. The general effect has been to increase very much the book cost of operation and to decrease correspondingly net earnings.

As an illustration we may select the Gulf, Colorado & Santa Fe Railway. The mileage of this system has continued almost identical since 1892. Its gross earnings increased from $4,783 per mile in 1892 to $6,702 in 1903. Its net earnings rose from $270 per mile in 1892 to $1,976 in 1901, but while the gross continued to advance from 1901 the net fell from $1,976 in 1901 to $1,178 in 1903. If this decline in net earnings was due to increased cost of operation following upon increased cost of supplies and labor that certainly would be a very substantial reason for an increase in rates, but such evidently was not the fact.

It will be seen that the cost of conducting transportation was almost exactly the same in 1901 as it was in 1903, but that the combined cost of maintaining way and equipment had increased from $1,781 to $2,668. The general superintendent of the St. Louis Southwestern Railway testified that from $800 to $1,000 per mile was a fair allowance for maintenance of way. The average cost of maintaining way and structures upon all lines in Group VIII for the year 1903 was $717, and in Group IX $703 per mile. The same item in case of the Atchison, Topeka & Santa Fe for the years 1901 and 1902 was about $750. The Gulf, Colorado & Santa Fe runs through substantially the same country, has substantially the same gross earnings, from substantially the same kinds of traffic as the Missouri, Kansas

& Texas, the St. Louis Southwestern and the St. Louis & San Francisco. The cost of conducting transportation was substantially identical for the year 1903 but the cost of maintaining way, structures and equipment was $1,000 per mile less upon those lines. There is nothing in the construction of that railroad or its operation which calls, under ordinary circumstances, for any unusual outlay and it seems certain that the cost of maintaining way and equipment has for this year been increased at least $1,000 per mile by charging into those items what is properly an addition to the property or arises from some unusual condition peculiar to that year. We can entertain no doubt that upon any proper system of bookkeeping the net earnings of the Santa Fe road for the year 1903 should be increased by at least $1,000 per mile in order to represent the actual earning capacity of that property.

If we examine the capitalization of the respondents as shown in the above table, disregarding the Missouri Pacific which is not properly interested in this traffic, we find that the stocks and bonds standing against the various properties run all the way from $98,635 per mile in case of the St. Louis Southwestern to $22,686 per mile in case of the Gulf, Colorado & Santa Fe. These two railroads earn in gross almost exactly the same amount per mile, the cost of conducting transportation is nearly identical, and the cost of maintenance of way and equipment upon the same basis of bookkeeping is practically the same. In other words the value of these two properties based upon net earning capacity is about equal. It is evident that the reasonableness of the rates in question, which must be the same upon these two systems, cannot be determined by the capital account. There is no evidence which tends to show and probably no evidence could be obtained which would show the original cost of either of these properties, what its stocks originally represented in the way of actual value, or what they cost the original holders. It might be shown but does not appear what the present market value is.

We can, however, do in this case what is seldom possible and

that is, state approximately with some confidence the cost of reproducing the railroads which are especially interested in the transportation of this traffic.

The state of Texas enacted in the year 1894 its stock and bond law by the terms of which the railroad commission of that state was required to value the railroads which were prohibited from issuing stocks and bonds beyond that valuation. The first valuation under that law was made in 1895 and whatever railroads have been since constructed have been valued as constructed. The present engineer of the Texas Commission appeared and testified in this hearing. He was not the engineer who superintended the original valuation but had been employed in that work in a subordinate capacity and was familiar with the method then used as well as the present methods. He testified at length as to the manner of these valuations and the values themselves.

The valuations of the Texas Commission of 1895 were by no means a guess. They were made in great detail, with great pains and with an honest attempt at accuracy. The purpose of the valuation was to determine not properly the value of a particular railroad but the cost of reproducing it at that time. Each mile was taken by itself and each item which enters into the cost of constructing a railroad by itself in actual quantities as shown by the profiles of the various roads. The allowances for the different items were liberal. Nothing was, however, allowed for the seasoning of the roadbed so to speak, nor for the franchise and good will of the railroad. The results arrived at did not perhaps express the value of the properties, but they did express, and with substantial fairness and accuracy, the cost of reproducing those properties at the time of the valuation.

It would not be profitable at this time to refer in detail to the estimate placed upon the lines of the several respondents. It is sufficient to say that the main lines of the companies which are involved in this investigation were valued at approximately $18,000 per mile including equipment. In some cases the valuation was somewhat higher and in others somewhat lower but this was about the average.

Since that time extensive improvements have been made both in the structures and equipment of all these lines. The engineer testified that these improvements had amounted to from $4,000 to $8,000 per mile and that if these lines were to be revalued today upon the basis of cost of reproduction the valuations would be increased by these amounts including equipment.

Since 1895 about 2,000 miles of railroad have been built in the state of Texas. The law requires that in such case all contracts of construction, or for the purchase of supplies together with the profile of the road and other information necessary to show the exact sums expended in the construction and equipment of the property shall be filed with the commission. In valuing these properties the engineer at the present time usually allows something in excess of the actual contract prices paid. If the right of way is donated it is nevertheless treated as purchased and, therefore, as an asset in the valuation of the property, so that the present valuation would be almost without exception in excess of the actual cost of the road. Within the last three or four years the International & Great Northern Railroad Company has constructed nearly 300 miles of railroad which will be one of the principal lines of that company. This piece of railroad is in every respect modern. It has a maximum grade of 3/10 of one per cent and is capable of carrying the heaviest modern equipment. While there were no unusual difficulties in its construction, it was said that the grading was heavy and that the usual number of bridges and culverts were involved. The actual cost of constructing and equipping that road with the best modern equipment was from $25,000 to $27,000 per mile.

The testimony shows that the cost of building the lines of the respondents north of Texas would be approximately the same as in that state. If we disregard the Missouri Pacific, the St. Louis, Iron Mountain & Southern and the main lines of the Atchison, Topeka & Santa Fe it can be said with confidence that the lines of the various respondents over which this traffic passes could be today reproduced, including their equipment,

for from $25,000 to $30,000 per mile. It is probable that $25,000 per mile would be sufficient. The cost of constructing the Rock Island road from the Red River to Fort Worth was about $30,000 per mile but it was said that this piece of railway was equal to anything west of the Mississippi River, much better than the average of those involved in this investigation, and that the above estimate included an expensive bridge across the Red River and extensive terminals at Fort Worth.

As bearing upon the reasonableness of this advance it is pertinent to inquire how the rates which were previously in effect had been established and how the present advances were made.

As already stated all class rates were increased. For the purpose of showing the exact history of these rates the following table is given from which all changes which have occurred with the dates of such changes since 1887 can be seen.

[Rates in cents per 100 pounds.]

Classes	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
April 1, 1887....	120	104	88	77	...	67	60	55	45	40
Oct. 15, 1888....	120	104	88	77	63	67	60	55	45	40
Jan. 20, 1889....	133	117	101	90	70	75	67	60	48	40
Nov. 15, 1891....	133	117	102	92	72	76	67	57	46	39
Dec. 4, 1893....	130	113	97	90	70	74	65	54	43	36
March 15, 1903....	137	121	104	96	75	79	70	58	46	39

Most commodity rates were also advanced at the same time and many advances were made by cancelling commodity rates previously in effect and thereby subjecting the article to a higher class rate. It would not be profitable to encumber this report with a detailed statement of the advances in commodity tariffs.

It will be seen from an examination of the above table that with one exception all class rates were advanced on March 15, 1903, over those previously in effect. It will be further seen that with two minor exceptions the rates established by the tariffs of March 15, 1903, were higher than those in effect in

1887 or at any time since. This is not true of commodity rates. While the rates put into effect March 15, 1903, were almost without exception higher than those which immediately preceded them, and while in many cases the present rates are higher than those in effect in 1887 or since, this is not uniformly so. In many instances these commodity rates had been reduced subsequently to 1887 so that the present rates as advanced are still lower than those in effect when tariffs were first filed. In some instances also where articles move under the class rate they take the benefit of some exception or have been subject to a change in classification so that the actual cost of transporting the article today is less than it was in 1887.

Attention is especially called to the fact that these rates have not been the subject apparently of what may be termed acute competition. The class rates have been changed only five times in the last sixteen years, including the change of March 15, 1903. Changes in commodity rates may have been somewhat more frequent but here again they do not in most instances exceed six or seven. The rates which were advanced had not been the product of rate wars but were rather the result of normal competitive conditions acting through a long period of time under ordinary conditions.

The articles which move under these advanced rates are supplied both from the middle west and from the Atlantic seaboard. Whether they shall be procured upon the Atlantic seaboard or in the middle west depends largely upon the rate at which they can be transported. There must, therefore, be an established relation of rates between these two sections and for many years such a general relation has existed. While all-rail rates are in force from eastern territory to Texas Common Points the great bulk of the traffic appears to move by water to Galveston and to the interior destination by rail. It is, therefore, evident and the testimony also clearly shows, that rates from St. Louis could not be advanced materially without a corresponding advance of this rail-and-water rate from New York. The first thing to be done was to reach an understanding with the water lines that their rates should be advanced and it appears from the evidence in the record before us that this

matter was taken up with the water lines and an understanding reached that the rates from the Atlantic seaboard should be increased.

It is also evident that rates must be the same by all lines from St. Louis and related gateways to these Texas Common Points. For the purpose of securing such uniformity of action the different lines interested held several conferences as a result of which an understanding was reached that these advances should be made. At these conferences the amount of the advance was determined upon and the date at which that advance should take effect.

In consequence of these agreements or understandings ocean-and-rail rates from the Atlantic seaboard and rail rates from St. Louis were advanced at or about the same time and by approximately the same amounts. It is not necessary to determine for the purposes of this investigation whether these so-called understandings amounted to an agreement in violation of the Anti-trust Act. The important thing to observe is that as a practical matter these advances were the result of concerted action and that they could not have been made without such concert of action.

These advances were not the result of any special commercial conditions. We do not by this refer to the general prosperity which is relied upon by the defendants as one justification for the advance. It sometimes happens that commercial conditions limit the rate which can be charged. If more than a certain transportation charge is imposed the traffic will not move, and it is only by a proper adjustment of rates that a free movement of traffic can be maintained. Many rates are varied in obedience to such conditions, but there is nothing of the sort in the advances before us. These advances for the most part did not affect the volume of the traffic. If they had been made from the middle west and not from the Atlantic seaboard they would have determined the point from which the articles should be obtained, and, therefore, the route over which they should move, but the difference in rate did not sufficiently affect the price to the consumer or the price which could be obtained by

the producer to limit the production or consumption of the articles themselves.

CONCLUSIONS.

It must be assumed upon this record that the rates in effect previous to March 15, 1903, were just and reasonable under the conditions which had previously prevailed. The carriers have earnestly insisted that they were too low, but the case shows that they had been voluntarily established and observed by these carriers themselves. These rates were the product of what may be termed normal competition acting through a long series of years which is, perhaps, where such competition has actually existed, as fair a test of a reasonable rate as can be applied under the present state of the law.

The theory of this country in respect to its interstate rates in the past has apparently been that competition between various railroads would, if it could be secured, produce reasonable freight rates in the same way that competition tends to produce a reasonable price of commodities in general. This was the idea expressed in the enactment of the 5th section of the Act to regulate commerce in 1887 which prohibits pooling. It was also the purpose of the Sherman Anti-Trust Act of 1890 which forbids all agreements in restraint of interstate commerce and, as interpreted by the Supreme Court of the United States, all agreements between carriers as to the rate of freight applied to interstate shipments. That idea has received the sanction of judicial interpretation and the approval of judicial dicta. It is impossible to read the utterances of the Supreme Court in the Trans-Missouri Case and the Joint Traffic Association Case without the conviction that a majority of that tribunal were of the opinion not only that competition could be relied upon to regulate freight rates but that it was the safest and best means to that end.

But it is urged there has been in the past even greater restraint of competition than exists today; and upon the face of things this is true. The rates filed in 1887 were undoubtedly named by some traffic association. The Trans-Missouri Association had jurisdiction in its day over this very traffic. How

can it be said that there was actual competition then while there is none now? The answer is found in differing practical conditions. Although the law has since 1887 required an observance of rates the published tariff was frequently departed from in this section until 1902 or thereabouts. While in theory these rates were determined by the action of a traffic association the only sanction which the decrees of that association had was the good faith of the representatives of these different railroads. Those gentlemen habitually went into these meetings and gave assurances which were broken as soon as given. The result was that out of these conditions grew an actual competition which applied in the past as it does not today. At the present time rates are observed generally, partly because more efficient legal methods for compelling an observance have been devised, but largely because the owners of these properties have learned that the maintenance of rates pays. The understandings and announcements of the present Tariff Committee are more potent in practical result than the agreements of the Trans-Missouri Association. Advances are readily considered, agreed upon, and made permanently effective between competing lines. Nothing can more strongly emphasize the present situation than what was actually done in this case. When the persons who control these properties can determine in New York that rates shall be advanced, and so notify their subordinates in the southwest; when these subordinates acting on these instructions can determine upon the amount of such advances and the time when they shall take effect; when in addition it is possible to secure as a condition concomitant corresponding advances from the Atlantic seaboard, it can hardly be said that competition plays a large part in determining whether that advance is reasonable.

We think, therefore, that it must be held upon this record that these rates which were in force previous to March 15, 1903, were sufficiently high. We further think that in a case like this, where the former rates have been long in effect, and where the advance has been made by concerted action the justification should be clear.

One ground upon which these respondents rest that justifica-

tion is that they are entitled to participate in the general prosperity. To the proposition that the railroads of this country are entitled to share in the prosperous conditions of the present we entirely assent. The fluctuations in the net revenues from railroad property as a whole ought not to be and will not be as great as with most other kinds of property; but such fluctuations will exist. When the claims of these respondents are carefully examined that is not at all the thing for which they contend, but rather that because the prices of the commodities which they transport have advanced the rate of transportation should also be advanced. To that we do not assent.

The freight rate is not a commodity the price of which should ordinarily vary with the price of the commodities which are transported. A railroad may not advance its passenger fares simply because the people who ride are making more money. The question is rather whether the fare charged allows the carrier a fair return for its service.

To the statement of this proposition exists a most important qualification. Some freight rates are largely a commercial proposition; and in so far they may properly vary with varying business conditions. For example, the price of the product of a particular factory may depend largely upon the price of the raw material and into the cost of that raw material the item of transportation by rail may enter as an important part. When the price of the product falls the price paid for the raw material must also decline and this necessitates a drop in the freight rate. It may happen that the freight rate is a sufficiently important part in the cost to the consumer so that a reduction will stimulate consumption. A railroad often makes and very properly makes a low rate in times of depression for the purpose of enabling a manufacturer to continue his business, and certainly in this case there is no reason why with the return of prosperity the rate should not be restored. It appeared that rates on iron articles for example in Central Freight Association territory had been reduced during the period of depression which preceded the year 1900, and the Commission held that under these circumstances they were

properly restored to their former figure. Proposed Advance in Freight Rates, 9 I. C. C. Rep. 382.

The rates in question and most freight rates are not of that character. No reduction in these rates has been made in the past for the purpose of stimulating the movement of this traffic. The amount of these advances is so slight as compared with the selling price of the article transported that they produce no effect whatever upon the volume of the traffic. Now with respect to a rate of this kind we do not think an increase in the price of the article transported justifies of itself an increase in the freight rate. These rates were not reduced when prices fell; why should they be advanced when prices rise? An incident which occurred in this very case strongly emphasizes the absurdity of the claim.

Cotton is an important item of traffic upon the International & Great Northern Railroad, one of these respondents. It is well known that the ravages of the boll weevil have seriously affected the cotton crop in certain parts of Texas. The attorney for the International & Great Northern, himself a former railroad commissioner of Texas and a thoughtful student of this subject, gave as a reason for the advances in question in which his line participated, that owing to the boll weevil the cotton crop upon a large part of his road was a failure, and that this reduced the amount of cotton for transportation; that in consequence of the failure of this important crop the whole country was impoverished and was able to purchase less, which also contributed to reduce the income of his railroad. For these reasons it had become necessary to advance rates in order to obtain sufficient revenue with which to operate the road and pay a fair return upon the investment. Here, therefore, we have in the same case and by parties of the same general system a claim upon the one hand that these advances are justified by general conditions of prosperity and upon the other hand that they are justified by general conditions of adversity.

Railroads should share in the general prosperity. They should do this partly by being able to advance those rates which have declined under commercial conditions. They should do it still more by the increased traffic which they obtain. In

times of prosperity when money is plenty and business good people ride more, buy more, new industries are being established and old industries are active, traffic increases and out of such increased traffic the railway obtains, by automatic action so to speak, without any advance in its rate a large share in the general prosperity.

The second justification for these advances is the increased cost of labor and supplies. The price of labor and materials has fluctuated in the past and probably will in the future, being as a rule higher in good than in hard times. In 1892 times were prosperous. Comparing these prices then with 1903 when these advances were made we find that the cost of supplies to these defendants was but little if any more. Fuel, the most important single item, was less per ton. Steel rails were about the same; lumber somewhat more. Labor was a trifle higher by the day, but in 1903 a dollar expended in labor would move more tons of freight one mile than it ever had before. The total cost of moving a ton of freight one mile upon the lines of these respondents as a whole was probably as low in 1903 as it had ever been.

One other fact should be carefully noted with respect to these particular lines. It is well understood that freight rates should decline as a country develops and as business, therefore, increases. Rates are and have been lower in the very densely populated portions of our country than in those parts where population is less dense; and this is because with the increase of traffic comes increased profit from the handling of that traffic. Now there is no portion of the United States which in the last fifteen years has increased to a more marked degree in population, there are few sections of our country in which greater development has occurred than here. Within that time a great volume of export business has been directed over the lines of these respondents to Galveston and importations have begun to flow in through that port. The increase in tonnage has been enormous and we have noted the economies which have been introduced into the handling of that tonnage.

It was urged that the improvements required for these economies, the reduction of grades, the laying of heavier rail,

the purchase of modern equipment, had necessitated vast outlays of money and that this was a valid reason for the advance in rates. Undoubtedly the making of these improvements has required the expenditure of large sums; in many cases it has amounted to a virtual reconstruction of the railroad and to a practical change of its equipment. This added expenditure must be considered in determining the reasonableness of these rates, but does it justify an advance in rates? What has been the purpose of these improvements? Certainly to decrease the cost of operation, to handle freight and passengers at less expense than they could be handled in the former way. It is a strange logic which imposes upon the public a higher rate while insuring to the carrier a lower cost of operation. The actual making of these improvements may have added not only to the expense of operation but may have also detracted from the efficiency of operation. The prosecution of the necessary work has interfered with the movement of traffic and thereby added to the cost of this movement. But all this is temporary and comparatively insignificant and should not be made an excuse for a permanent advance in rates.

It is urged that the increased volume of traffic has necessitated these outlays; that otherwise the business could not be handled. And that is probably true; but increase of traffic, while it may produce temporary embarrassment, should reduce, not advance, rates.

We find here a schedule of rates fixed by competition; we find every factor which ought to result in a reduction of those rates and yet as a consequence of all this, of improved methods of operation, of better roadways, of modern equipment, of an enormous increase in traffic, we find that during the last sixteen years a material increase in these rates has occurred, and we find that these last advances were made by a virtual combination between the different carriers. We are strongly of the impression that these advances ought not to have been made.

But this cannot be affirmed with certainty. As already said, the final test is the actual result of actual operation and it cannot be denied that the financial showing of these respondents, especially those roads which operate in the state of Texas, is not

favorable. The railroads embraced in this discussion are mainly confined to Groups VIII and IX. If these groups are combined and treated as one, the average net earnings per mile are much lower than those in any other group in the United States. The percentage of cost of operation to gross revenue is larger than in any other group in the United States. While many of these respondents are yielding a munificent return upon any fair basis of valuation, and while most of them are earning six per cent at least upon the cost of reproducing the properties to-day, nevertheless it is true that many of them do not now and have not for years paid dividends to their stockholders. This is partly due to the fact of over-capitalization and partly perhaps to the peculiar state of the law in Texas, which as applied to these railroads virtually requires that the net earnings be retained in the property, as previously explained. But in any view of the matter the fact cannot be overlooked that these Texas lines as compared with other railroads in this country are poor.

This is a general investigation. Its cardinal purpose was to obtain reliable information as to the increased cost of labor and supplies, and the legitimate effect of these increases upon rates. No complainant is here demanding relief from some particular rate. No particular rate and no particular set of rates has been investigated. Since the beginning of this investigation we have had occasion, upon complaint, to reduce coal rates from McAlester to northern Texas; we have ordered a reduction in lumber rates from southern mills east of the Mississippi River to northern markets which must, if complied with, affect to an extent, the corresponding rates of these respondents; we are just promulgating a report by which a reduction in cattle rates from southwestern territory is involved. All this means a deduction from the net revenues of these respondents, and an examination of Table 4 shows that net earnings per mile as a rule decreased in 1904 somewhat, notwithstanding the advances in rates. We might legally and perhaps with propriety make in this general proceeding an order as broad as the action of the respondents themselves and direct a general reduction of those general advances, but in our opinion this ought not to be done

unless it is perfectly clear that the rates in effect are unreasonable. While we are strongly of the impression that these advances were improper, that does not appear with sufficient certainty to warrant the making of an order in this proceeding, and none will be made.

No. 466.

CATTLE RAISERS' ASSOCIATION OF TEXAS, Complainant, and THE CHICAGO LIVE STOCK EXCHANGE, Intervener,

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; CHICAGO & ALTON RAILROAD COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; WABASH RAILROAD COMPANY; and ILLINOIS CENTRAL RAILROAD COMPANY.

Decided August 16, 1905.

1. A railroad company may maintain its live-stock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition the depot of defendants is immaterial, for they were, and still are, in fact the point to which the stock is transported and unloaded under the shipping contract of defendants.

2. Excluding the territory covered by the reduction of 1896, which is described in the findings, live-stock rates to Chicago participated in by defendants were on May 31, 1894, reasonable compensation for the service performed, including delivery at the Union Stock Yards in Chicago. At all times since that date such rates have been, and now are, sufficiently high to include a delivery at the stock yards as such delivery was made prior to June 1, 1894. While since that time there have been advances and reductions from some points, they have been about equal, averaging probably less than one cent per 100 pounds and the great majority of rates remain the same as they were on May

31, 1894. These scattered reductions, as well as the advances, applied variously, some on cattle, some on sheep and others on hogs. No change in the rate has been made to offset the addition of the terminal charge in Chicago of $2.00 per car, or with any reference to such charge. The imposition of any such terminal charge, except in so far as the cost of delivery in Chicago has been increased by the trackage charge paid by defendants to the Stock Yards Company, since June 1, 1894, is unreasonable. Such increased cost of delivery, that is to say, such trackage charge, is fairly estimated for all the defendants at one dollar per car. Citing and applying *Interstate Commerce Commission* v. *Chicago, Burlington & Quincy R. Co.* 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824, *Held:*

First: That delivery to the Union Stock Yards prior to June 1, 1894, was included in the rate and was in no sense a gratuity.

Second: That outside of the excluded territory, a terminal charge for delivery to the Union Stock Yards in Chicago of one dollar per car is reasonable, and defendants'terminal charge of two dollars per car, exacted since June 1, 1894, is unreasonable.

Third: That the case be retained for further proceedings in the matter of reparation.

S. H. Cowan for complainant and intervener.

Ed. Baxter for defendants.

C. A. Severance and *Frank B. Kellogg* for Chicago Great Western Railway Co.

Francis H. Lynde for Chicago & Northwestern Railway Co.

Robert Dunlap for Atchison, Topeka & Santa Fe Railway Co.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

This is the fourth report which the Commission has had occasion to make in this matter and in order to understand the questions presented for consideration now a brief history of the case is necessary.

On June 1, 1894, the railways entering the city of Chicago imposed a charge of $2.00 per car for the delivery of live stock at the Union Stock Yards. September 1, 1896, the Cattle Raisers' Association of Texas filed a complaint alleging the unlawfulness of this terminal charge and on March 10, 1897, the Chicago Live Stock Exchange intervened in favor of the complainant. The original complaint only put in issue the lawful-

ness of this terminal charge when applied to shipments of cattle from certain territory, but the intervening petition attacked the charge as to all live stock shipments delivered at the Union Stock Yards by the above defendants, who have answered that petition.

After investigation the Commission on January 20, 1898, published its report and opinion holding that the charge was unreasonable to the amount of $1.00 per car, and stating that an order would be made requiring the defendants to cease and desist from continuing to impose the charge of $2.00, 7 I. C. C. Rep. 513. Subsequently the defendants filed a motion for rehearing, which, after further argument, was denied August 4, 1898, 7 I. C. C. Rep. 555a; and thereupon an order was made pursuant to the original opinion, the question of reparation being reserved for future consideration. The defendants having refused to obey the order, legal proceedings were instituted for its enforcement which finally resulted in the affirmance by the Supreme Court of the United States of the decree of the Circuit Court dismissing the petition of the Commission, *Interstate Commerce Commission v. Chicago, B. & Q. R. Co.,* 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824, but with this qualification:

Previous to June 1, 1894, live stock had been delivered by the defendants at the Union Stock Yards at the Chicago rate. In making such delivery the various defendants had operated their trains over the tracks of the Stock Yards Company without charge to them by that company. On June 1, 1894, the Stock Yards Company imposed for the first time a trackage charge which amounted in some cases to 80 cents per car and in other cases to $1.50 per car, whereupon the defendants had imposed this charge of $2.00 per car. The Commission held that the expense of delivery at the stockyards had, previous to June 1, 1894, been included in the Chicago rate; that this expense to the carriers was increased by the action of the Stock Yards Company on the average $1.00 per car and that, therefore, the defendants might properly increase their own charges $1.00 per car; but that in imposing $2.00 they exceeded what was just and reasonable by the amount of $1.00.

In 1896 live stock rates from certain of the territory complained of had been reduced 5 cents per hundred pounds amounting to from $10 to $12 per car, and this fact was stated in the report of the Commission. The Supreme Court held that the Commission was right in its conclusion that the expense of delivery had been previously included in the through rate and that the defendants were not justified in imposing the additional charge of $2.00 when the expense to them had only been increased by $1.00; that, therefore, the entire rate which the shipper was compelled to pay was $1.00 too high; but inasmuch as the rates from certain territory had been reduced by an amount much greater than the addition made by the terminal charge the court was of the opinion that the total rate was still sufficiently favorable to the shipper; and since the report of the Commission left it doubtful whether this reduction of 5 cents applied to all the territory in question or, if it applied to a part only, did not definitely define that part, the court could not enforce the order of the Commission as made but was compelled to affirm the decree declining to enforce the order. The court stated however, in concluding its opinion, that its decision and consequent decree were to be without prejudice to the right of the Commission to subsequently proceed with respect to that territory to which the reductions did not apply, if such there was.

On February 28, 1903, the Cattle Raisers' Association of Texas and the Chicago Live Stock Exchange filed a petition asking the Commission to proceed with the matter of reparation and also to reopen the case with a view to defining the territory to which the reduction of five cents per hundred pounds did not apply and making an order in respect to that territory. This petition was granted and the defendants notified to file such answers in the premises as they might desire. It had appeared in the original case that only the defendants whose lines entered Chicago were interested in the imposition of this $2.00 charge and accordingly the original order of the Commission had been directed against only these defendants. The petition for a reopening of the case only included these same railways which were the Chicago, Burlington & Quincy,

the Chicago Great Western, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, the Chicago & Alton, the Chicago, Rock Island & Pacific, the Atchison, Topeka & Santa Fe, the Wabash and the Illinois Central.

The defendants instead of answering filed a motion to vacate the order of the Commission to proceed with the matter of reparation and to reopen the case. They contended that the affirmance of the decree finally dismissing the petition of the Commission to enforce its order to cease and desist from imposing the terminal charge concluded all proceedings of every nature whatsoever in the original case; that no reparation could be had and no further steps taken in that case to compel the carriers to desist from imposing this terminal charge. The Commission after having fully heard the parties and considered the matter decided, first, that the matter of reparation was not connected with nor controlled by the order to cease and desist; that in the report which led up to the making of that order the Commission had expressly reserved the subject of reparation for further consideration; and that while a decision upon the order to desist might be of such a character as to necessarily control the awarding of reparation it was in no sense an adjudication of that subject. It, therefore, held that it might properly proceed at the present time with that branch of the case and stated that it would do so.

It was held, secondly, with respect to the order to cease and desist that as to all territory over which the reduction of 1896 applied the original case was ended and no further steps could be had, but that it was still open to the Commission to inquire what that territory was and to proceed with respect to territory not embraced in those limits to correct the unreasonable rates produced by the exaction of this $2.00 charge. This in the opinion of the Commission it might properly do by reopening the case which had been already heard. It, therefore, decided that it would reopen such case for the purpose of permitting the complainant to show to what territory that reduction applied; and inasmuch as conditions might have changed between the date of our previous hearing in 1898 and the present time it seemed proper to permit the defendants to prove, if

they could, that rates from territory to which the reduction in question did not apply were nevertheless so low either by virtue of subsequent reductions or by reason of changed conditions that the rate plus the terminal charge did not impose an excessive transportation charge upon the shipper.

The complainant requested that the matter of reparation might be further held in abeyance until the opinion of the court could be had upon the other branch of the case, since this might result in the saving of expense and inconvenience to all parties. The defendants made no objection to this and the Commission accordingly consented. The only branch of the case before us, therefore, at this time is that relating to an order for the future and in the hearing of that but two questions of fact are open, which are:

1. To what territory did the reduction of 5 cents, mentioned in the previous report of this Commission, as made October 1, 1896, apply.

2. As to the remaining territory, have the rates to Chicago become so low that the addition of the $2.00 terminal charge is not unjust and unreasonable. A third question of fact was gone into and has been considered by the Commission, but that will be referred to later.

The defendants protested that the Commission had no jurisdiction in the premises, excepted to its action in proceeding further in this case, and appeared specially in all these hearings.

1. The territory covered by the reduction of October 1, 1896, embraces the entire state of Texas north and west of the Galveston, Harrisburg & San Antonio Railroad and the Houston, East & West Texas Railroad, including stations on the former and excluding those on the latter; also all stations in Indian Territory and Oklahoma Territory upon the Missouri, Kansas & Texas Railroad; the Rock Island system, and the Atchison system.

The reductions in this territory were not all 5 cents per hundred pounds to Chicago. That was the maximum and applied to the greater part of the territory described, but in some sections the reduction was less. These reductions appear to

have applied only on cattle, the kind of live stock principally shipped to Chicago from this section. In 1902,—the figures for later years are not available,—2,924,124 cattle and calves were received at Chicago. Of these only 73,794 were from the state of Texas, and probably not more than 100,000 from the entire territory covered by these reductions. As to twenty-nine thirtieths of the shipments of the defendants the exaction of this terminal charge has been illegal.

2. In order that the findings of fact with respect to the territory to which the reductions in question did not apply and which is, therefore, still before the Commission in this proceeding, may be intelligible it is necessary to state what, as we understand the matter, the question of fact presented is.

It was held by the Commission in the former case that while the carriers might segregate their rate, imposing a separate charge for delivery at the Union Stock Yards their action in adding to the former rate an arbitrary terminal charge was not in any proper sense such a segregation; that the former rate to Chicago included a delivery at the Union Stock Yards and, therefore, that when the carriers added a charge of $2.00 while the expense of making the delivery had only been increased $1.00 they imposed upon the public an unreasonable transportation charge to the extent of $1.00. This view of the matter has been apparently approved by the Supreme Court of the United States.

A carload of live stock weighs approximately 20,000 pounds so that $2.00 per car is equivalent to about 1 cent per hundred pounds. If, therefore, the carriers had reduced the Chicago rate by 1 cent a hundred pounds, or under the circumstances of this case, by ½ cent per hundred pounds and added this terminal charge, the through rate to the Stock Yards would still have been reasonable, their conduct in this respect would have been unexceptionable, and since terminal expenses of this kind are usually deducted before a division of the through rate, the carrier performing the special service would have received compensation for it. It is evident that if the Chicago rate was less than a fair compensation for delivery at the Union Stock Yards by ½ cent per hundred pounds then

the addition of the $1.00 terminal would not have produced an unreasonable charge in gross. It was said upon the argument of the original case that live stock rates to Chicago were unreasonably low before June 1, 1894, and that for this reason the addition of the terminal charge was proper. There was, however, no testimony upon that subject and the Commission held that in the absence of such testimony it must presume that the rate which the carrier had voluntarily established and was maintaining on May 31, 1894, was a reasonable rate including the entire service of delivery at the Stock Yards; and this view of the Commission has apparently received the approval of the Supreme Court. But in the present record there is a great mass of evidence from both parties bearing upon the reasonableness of these rates; so that the question of fact before us is were these rates so low in 1894, or are they, under changed conditions so low today that the carriers may justly add this terminal charge without any equivalent reduction of the Chicago rate.

It seems necessary first to examine somewhat the history of these rates since 1894. The Commission has caused elaborate tables to be prepared showing rates from nearly all cattle shipping stations in territory west of the Mississippi River to Chicago, so that there is presented a complete history of these rates from all these stations from May 31, 1894, to May 23, 1904. It would not be profitable to attempt any complete statement of what this testimony shows but certain illustrative examples may be given and for this purpose we will refer to the Chicago & Alton, the Burlington, the Rock Island, the Northwestern and the Chicago, Milwaukee & St. Paul systems. It should be noted that from nearly all this territory cattle, sheep, and hogs are all marketed so that from each of the stations referred to there are usually three separate rates which are almost always different in amount and one of which may change without a corresponding change of the others.

There are shown by these tables on the Chicago & Alton in Missouri 53 stations, from which there were in effect May 31, 1894, 159 rates. Between May 31, 1894, and May 23, 1904, there were 50 advances and 3 reductions. In case of the Rock

Island system there were shown in Iowa, Missouri and Kansas 215 stations with 645 rates. The advances were 216 and the reductions 18. The Northwestern system, not including the Elkhorn division, showed in the states of Wisconsin, Minnesota, South Dakota, Nebraska, North Dakota and Iowa 599 stations with 1797 rates. The advances were 214 the reductions 219. The Burlington system in Iowa and Missouri showed 333 stations with 999 rates, the total advances being 300, the reductions 33. The Chicago, Milwaukee & St. Paul showed 868 stations and 2604 rates with 229 advances, 443 reductions.

It will be seen, therefore, that the great majority of these rates remained exactly the same from 1894 down to 1904. The advances and reductions were about equal, and both advances and reductions were slight, on the average not probably equal to 1 cent per hundred pounds. In this finding we do not include either the territory to which the reduction of 1896 applied, or the territory covered by the case of the Cattle Raisers' Association of Texas hereafter referred to.

These changes in rates seem to have been made for various reasons. It was testified by all traffic officials that in the making of the Chicago rate, and, therefore, in the making of these changes no consideration whatever had been given to the terminal charge. When the initial line was not also the delivering line the rate was made by the initial line, which did not receive any part of the terminal charge, and even when the same line originated and delivered the traffic the terminal service was not considered. It was not claimed that any particular rate was too low by reason of these reductions unless the general level of live stock rates was too low.

We have said that the present record contains much testimony bearing upon the reasonableness of live stock rates to Chicago. The defendants contend and have introduced evidence tending to show that these rates on May 31, 1894, were not fairly compensatory even after the terminal charge had been added, and that even if they were sufficiently high on that date they are, owing to increased cost of operation, too low at the present time. The complainant has met this with the claim that

they were unreasonably high in 1894 and that notwithstanding the increased cost of labor and supplies the actual expense of operation, owing to the adoption of various economies, is no more today than ten years ago, and that in view of the great increase of tonnage, rates should be lower, not higher, than they were in 1894.

Since 1899 cattle rates have been three times advanced from that territory to which the reduction of 1896 applied and are now higher than they have ever been since rates were first filed with the Commission in 1887. Upon the making of the last advance in 1903 the Cattle Raisers' Association of Texas filed complaint against the Missouri, Kansas & Texas Railway Company and many other railway companies attacking the reasonableness of rates from this territory and also from certain other territory west of the Missouri River and a great mass of evidence has been taken in that case. In addition many hundred pages of testimony were taken in this case. Written and oral arguments of great length and detail have been presented. We have before us in these two inquiries everything that can be shown and said as to the reasonableness of live stock rates from all points on shipments delivered by these defendants at Chicago.

In the opinions of the Commission in the *Cattle Raisers' Association of Texas v. The Missouri, Kansas & Texas Railway Company et al. post*, 296, and *In the Matter of Class & Commodity Rates from St. Louis to Texas Common Points, ante*, 238, the subject of live stock rates, and the effect of the advance in the cost of labor and supplies on rates have been fully discussed. No special question arises with respect to these defendants. With two exceptions, possibly, they are among the most prosperous railroad systems in the whole country. Their earnings afford a munificent return upon the value of their properties when estimated by any standard. Not only have they in recent years paid and are today paying dividends upon their stocks much in excess of the average return of all kinds of property in the United States, but they have also out of their earnings continually improved those properties. The market value of their stocks is for the most part much above par.

It would not be profitable to repeat what is said in those opinions. Excluding the territory covered by the reduction of 1896 we find that live stock rates to Chicago made or participated in by these defendants were on May 31, 1894, a reasonable compensation for the service performed, including delivery at the Union Stock Yards; that at all times since May 31, 1894, such rates have been and now are sufficiently high to include a delivery at the Stock Yards as made previous to June 1, 1894; that no reduction has ever been made in any of these rates to offset the addition of the terminal charge of $2.00 per car; and that the imposition of any such charge, except in so far as the cost of delivery has been increased by the trackage charge which the defendants are compelled to pay is unreasonable.

In its former report the Commission had found that previous to June 1, 1894, a delivery at the Stock Yards had been included in and paid for by the Chicago rate. The defendants had contended that this service was, previous to that date, a gratuity, but had introduced little direct testimony upon that point. Upon this hearing counsel asked that they be allowed to introduce further testimony in that behalf and that the Commission reconsider, in view of such testimony, its former finding. Since it seemed desirable that all the facts should be fully presented the Commission consented to hear this testimony and thereupon counsel produced on the part of each defendant one of the principal traffic officials of that company who testified that previous to June 1, 1894, his company had performed the service of making delivery at the Stock Yards beyond its own line for nothing. On the strength of this testimony the defendants insist that the Commission should reconsider its finding and now find as a matter of fact that this service had been, until the terminal charge was imposed, a gratuity. Since certain other testimony was brought out in the examination of these witnesses which bears upon this point it may be well to restate briefly our findings of fact in this respect.

Previous to 1865 live stock marketed in Chicago was delivered at four different points, and competitive conditions re-

quired all carriers to make delivery at either one of these points according as the shipper might direct. This led to much expense and inconvenience upon the part of the carriers making such deliveries and for the purpose of avoiding this the Union Stock Yards and Transit Company was organized. The purpose of that undertaking was to provide one place at which live stock would be delivered in the city of Chicago.

The movers in this enterprise were originally the railway companies interested. At first the stock was largely owned by the various railway lines bringing live stock to Chicago, but subsequently and from time to time this stock interest was transferred so that on June 1, 1894, the stock holdings of the railways in the Union Stock Yards and Transit Company were slight, if any. At first the directors of that company consisted almost entirely of representatives of the different railways interested, and a majority of the board continued to be made up in this manner until the management of the Stock Yards made known its determination to impose the trackage charge, June 1, 1894, when the various railway representatives resigned from the board of directors.

According to the original arrangement the Stock Yards Company was to construct, own and operate pens, shutes, tracks and other facilities for unloading, delivering, and marketing live stock. It was to construct tracks connecting its yards with the various lines of railway and to permit the railways to operate their own trains over these tracks to the unloading shutes without charge. All this was done as arranged. The Stock Yards were constructed by the Stock Yards Company and tracks laid connecting these yards with the various lines of railway. The railways ran their own trains, drawn by their own locomotives over these tracks of the Stock Yards Company without charge, but the Stock Yards Company received 25 cents a car for the service of unloading the cars of stock. While the original arrangement and understanding was that the railways should be given the free use of the tracks of the Stock Yards Company for the purpose of reaching the shutes and delivering live stock at the stock pens no formal contract of that sort was ever entered into. Upon the one hand the railways

were under no obligation to use these tracks or to unload their live stock at the stock yards and upon the other the Stock Yards Company was under no legal liability to permit the various railways to use its tracks in obtaining access to its shutes and pens.

The actual outcome of this enterprise was precisely that which its original promoters had contemplated. All live stock, in a very short time, which was intended for the Chicago market, was sent to the Union Stock Yards and the stock yards which had been formerly used as pens of delivery were abandoned. From 1865 down to June 1, 1894, practically all the stock brought to Chicago for sale or other distribution was delivered at the Union Stock Yards. Several of these defendants had no facilities whatever except their station platforms for unloading stock at any other point, while others of them had stock pens at which live stock in very limited quantities could be discharged. Stock received for shipment to Chicago was sent to the Union Stock Yards as a matter of course without further direction upon the part of the shipper. Ordinarily the only destination mentioned in the live stock contract which the shipper was obliged to sign was Chicago, and under that contract the stock was taken to the Union Stock Yards. The tariffs of the defendants all specified a rate to Chicago and under this tariff the public were entitled to ship to the Union Stock Yards.

It appeared in testimony upon the last hearing that a single system, the Burlington, had required in some cases previous to June 1, 1894, that their agents should ascertain the final destination of the stock and should waybill it accordingly. Considerable quantities of stock brought by that company to Chicago were destined to eastern points beyond Chicago and this would not necessarily go to the Union Stock Yards. It might also happen occasionally that parties would desire to unload stock, especially horses and mules, at some other point than the Union Stock Yards. For these reasons, apparently as a competitive measure, that company had provided, as stated in its circular of 1891, pens for the accommodation of eight carloads of stock at Hawthorne Avenue and this circular required

agents to call the attention of shippers to the fact that these pens were available for the purpose of unloading and resting stock without charge. The circular instructed agents to ascertain the final destination of the stock and to bill it to the Union Stock Yards or to Chicago as the case might be. This was for the convenience of the Burlington Road in the handling of this traffic. It appears that this company like all the others delivered as a matter of course all stock to be disposed of at Chicago at the Union Stock Yards.

An examination of the testimony of the traffic representatives of the various defendants who were produced as witnesses and testified upon the last hearing that the service of making delivery at the Stock Yards was a gratuity previous to June 1, 1894, shows that they based this assertion entirely upon the fact that the Stock Yards were not located upon the rails of their respective companies. They stated that in their opinion any service performed by a railroad beyond its own iron must of necessity be a gratuity and hence this service was a gratuity. They testified to no fact which contradicted the evidence already before the Commission; indeed their testimony was strongly confirmatory of that evidence; they simply gave their opinion upon the conceded facts.

We hardly think that the expression of this opinion can be of much value as evidence. For example the Illinois Central Railroad Company previous to June 1, 1894, had no stock yards of its own in the city of Chicago. It occasionally delivered a carload of horses or mules upon its freight platforms, and it made deliveries at one or two private yards when stock was consigned to the owners of those yards, but the only point to which it could and did deliver live stock in the city of Chicago was at the Union Stock Yards. Now how can it in any way modify the fact when Mr. Keepers, the General Freight Agent of that company, testifies that according to his understanding the service of his company beyond its own iron must be a gratuity? We find as a fact, in so far as this question is a question of fact, that previous to June 1, 1894, a delivery at the Union Stock Yards was included in the contract of shipment to Chicago and paid for by the rate to Chicago.

The facts as to facilities for delivery at points other than the Union Stock Yards by these various defendants at the present time were clearly brought out on the last hearing and should also be noted. The Wabash Company has no such facilities whatever and can and does only make delivery of live stock at the Union Stock Yards. Mr. Peabody, the statistician of the Atchison, Topeka & Santa Fe, was delegated to ascertain the location of the stock yards of the various defendants and give testimony upon that point. He stated that he had written the General Freight Agent of the Chicago & Alton asking the location of its stock yards and had been informed by him that his company had no stock yards at Chicago. The other defendants all have points at which they can make delivery of live stock in limited quantities upon their own rails. In cases where such facilities existed previous to June 1, 1894, they do not appear to have been enlarged. Where such facilities did not exist they have been provided for the purpose of being able to state that they in fact exist. These facilities are used in exactly the same manner and to no greater extent now than they were before the imposition of the terminal charge. It appeared that between 500 and 600 carloads of stock were unloaded each year by the Burlington system at its Chicago yard but it did not appear that any of these were for disposition in Chicago. With the exception of horses and mules to some extent, and an occasional carload of sheep and cattle live stock for sale in Chicago is now taken to the Union Stock Yards in exactly the same way that it was before the $2.00 charge was imposed.

One other fact may perhaps be stated. It was suggested in the original report that the defendants probably made delivery of live stock at the Union Stock Yards as cheaply as they could provide facilities of their own and as cheaply as they delivered other carload freight in the city of Chicago but there was no testimony from which a definite finding could be made. Such evidence was given upon the last hearing. Mr. Peabody, above mentioned, testified that the actual cost to his company of making deliveries of all carload freight in the city of Chicago either at final destination or to some connecting road for shipment beyond was $5.40 per car. He also said that he knew of no rea-

son why the expense of the Santa Fe system was greater in this particular than that of other lines entering Chicago. Upon this testimony we find that the expense of delivering carload freight by the defendants in Chicago is approximately $5.40 per car.

Upon the former hearing the Santa Fe Company filed a statement showing that the cost of delivering carloads of live stock at the Union Stock Yards was $2.28 per car, including trackage and 25 cents per car for unloading. Delivery by that company seems to be made at the present time at a somewhat less expense than formerly owing to the fact that it pays either a less trackage charge or no trackage charge for the use of certain lines by which it reaches the rails of the Union Stock Yards and Transit Company. Mr. Peabody gave in detail the expense of making deliveries for two months, viz., January, 1904, $1.79, and October, 1904, $1.77. In both these computations the cost of unloading was included and also the station expense of that company at the Union Stock Yards which was for the two months about two-thirds as much as the expense of operating its trains to and from the stock yards.

Conclusions.

The able attorney for the defendants, who appeared for the first time in this last hearing, has urged upon us with great earnestness certain considerations not much insisted upon in the former stages of this case, which should, he argues, lead to a modification of our previous conclusions of law. He urges, first, that the Union Stock Yards cannot be today and cannot have been in the past the live stock depot of these defendants for the reason that they do not exercise over it the same control which they exercise over their depots proper. The representatives of the various defendants were asked in detail whether their respective companies had to do with the building, the repairing, the insuring of the Union Stock Yards, or whether they appointed or directed in any way the help employed there. They all united in disclaiming any connection of this sort with that enterprise and from this we are pressed to conclude that the stock yards could not be the depot of these defendants.

Some little time ago this Commission heard the complaint of the Central Stock Yards Company, in which it was alleged that the Louisville & Nashville Railroad was unlawfully discriminating against the complainant in making deliveries of live stock at the Bourbon Stock Yards in Louisville, Kentucky, while it declined to make similar deliveries at the stock yards of the complainant. The Louisville & Nashville Co. was represented by the same learned attorney who now represents these defendants, and in that suit his defense was that the Louisville & Nashville had made the Bourbon Stock Yards its exclusive live stock depot. The Bourbon Stock Yards Company constructed all the facilities, kept them in repair, insured them if they were insured, controlled the help and indeed assumed the entire control and management of the plant and yet it was urged that these stock yards were the live stock depot of the Louisville & Nashville Railroad. Counsel enforced that contention by reason as well as by the highest judicial authority and the Commission held with him. *Central Stock Yards Co.* v.*Louisville & N. R. Co.* 192 U. S. 568, 48 L. ed. 565, 24 Sup. Ct. Rep. 339; *Railroad Commission* v. *Louisville & N. R. Co.,* 10 I. C. C. Rep. 173.

In that case the defendant railroad company had entered into a contract with the Bourbon Stock Yards Company by which it agreed to make those stock yards its exclusive live stock depot. In this case by arrangement which never took the form of a specific contract these defendants made the Union Stock Yards their depot in exactly the same way. What we call attention to is the fact that a railroad may maintain its live stock depot at a particular point although it neither builds nor repairs nor insures the stock pens into which the cattle are unloaded nor hires nor controls the men who do the unloading. Whether the Union Stock Yards at Chicago were in railroad phraseology or in legal definition the depot of these defendants is immaterial; they were and still are in fact the point to which this stock is transported and unloaded under the shipping contract of the defendants.

Counsel vigorously insists that inasmuch as the service of transporting these carloads of live stock to the Union Stock

Yards was performed beyond the rails of the defendants it must have been a gratuity. It is not obvious to us why if one railroad company leases or otherwise obtains the use of the tracks of another railroad company for the purpose of performing a particular service that service must of necessity be a gratuity. Strictly speaking in such case the tracks of the first company are, *quoad* the performance of that service, the tracks of the company which performs the service. These defendants had the right, previous to June 1, 1894, to operate their trains over the iron of the Stock Yards Company without payment in exactly the same way that they do today by the payment of a trackage charge. The stock was in their custody then as it now is until it was delivered to the owner or his consignee at the Union Stock Yards. The defendants would undoubtedly be liable for any damages which accrued after their trains entered upon the tracks of the Stock Yards Company in exactly the same way as over any other part of the transit. Upon what definition can that be called a gratuity which the shipper has a legal right to demand and which the carrier is under legal obligation to furnish?

It is suggested that in the last ten years reductions have been made in many hundred cases which are greater than the amount of this terminal charge and that in these cases, upon the theory of the Supreme Court, the imposition of the charge is proper. We do not so understand the decision. The addition of the terminal charge is only proper when the reduction has been such that the entire rate to the Union Stock Yards is reasonable. The Commission did not intend to hold in its former opinion that if the total through rate was reasonable the terminal charge would be unlawful, but rather that the mere fact of a reduction, made without reference to the terminal charge, would not show, in the absence of other testimony, that the through rate was reasonable. The court seems to have entertained a different opinion; but that has no application here, since it has been found not only that these scattered reductions had no reference to the terminal charge, but also that the reduced rate was still sufficient to include a delivery at the Union Stock Yards. If the opposite view were to prevail there would be numerous in-

stances in which the delivering charge might be applied to a carload of hogs and not to a carload of cattle shipped from the same station.

It will be remembered that the minimum trackage charge is 80 cents per car. In our opinion the defendants are justified in imposing whatever terminal charge has been necessitated by this exaction of the Stock Yards Company. Since this charge varies in different cases these carriers might, therefore, impose different terminal charges, but it is conceded that the charge must be the same by all. To compel those paying 80 cents to make only that charge would be in effect to compel every line to reduce its charge to the same figure. It seemed to us, therefore, that it was fair under all the circumstances to allow these carriers to impose a charge of $1.00. It was stated in the opinion denying the motion for reargument that the carriers were satisfied with this, provided the charge was to be adjusted upon the basis recommended by the Commission. Since the conclusion of the taking of testimony in the present hearing the defendants have filed statements disclaiming any intention upon their part to admit that $1.00 was a reasonable charge for transporting this live stock to the Union Stock Yards. Apparently these statements have been filed to rebut any presumption that the carriers had admitted that the charge found by the Commission was a proper one, and if so, they in no way alter our previous conclusion. However this may be, since the Commission only has power to direct the carriers to cease and desist from the present charge of $2.00, and since this charge is greater than the trackage paid by any company, the defendants will be ordered to desist from imposing the present charge as to all territory not embraced in the reduction of 1896, as described in the findings.

The case will be retained for further proceedings in the matter of reparation.

No. 732.

THE CATTLE RAISERS' ASSOCIATION OF TEXAS

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY; HOUSTON & SHREVEPORT RAILROAD COMPANY; KANSAS CITY SOUTHERN RAILWAY COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY; UNION PACIFIC RAILROAD COMPANY; CANE BELT RAILROAD COMPANY; CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY; CHICAGO, ROCK ISLAND & MEXICO RAILWAY COMPANY; CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY; CHOCTAW, OKLAHOMA & TEXAS RAILROAD COMPANY; EASTERN TEXAS RAILROAD COMPANY; EL PASO & NORTHEASTERN RAILWAY COMPANY; FORT WORTH & DENVER CITY RAILWAY COMPANY; FORT WORTH & RIO GRANDE RAILWAY COMPANY; GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY; GALVESTON, HOUSTON & HENDERSON RAILROAD COMPANY; GALVESTON, HOUSTON & NORTHERN RAILWAY COMPANY; GULF, BEAUMONT & GREAT NORTHERN RAILWAY COMPANY; GULF, BEAUMONT & KANSAS CITY RAILWAY COMPANY; GULF, COLORADO &

SANTA FE RAILWAY COMPANY; GULF & INTERSTATE RAILWAY OF TEXAS; GULF, WESTERN TEXAS & PACIFIC RAILWAY COMPANY; HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY; HOUSTON & TEXAS CENTRAL RAILROAD COMPANY; INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS; NEW YORK, TEXAS & MEXICAN RAILWAY COMPANY; PARIS & GREAT NORTHERN RAILROAD COMPANY; PECOS VALLEY & NORTHEASTERN RAILWAY COMPANY; PECOS & NORTHERN TEXAS RAILWAY COMPANY; PECOS RIVER RAILROAD COMPANY; RED RIVER, TEXAS & SOUTHERN RAILWAY COMPANY; SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY; SAN ANTONIO & GULF RAILROAD COMPANY; ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS; TEXAS & NEW ORLEANS RAILROAD COMPANY; TEXAS & PACIFIC RAILWAY COMPANY; TEXAS CENTRAL RAILROAD COMPANY; TEXAS MEXICAN RAILWAY COMPANY; TEXAS MIDLAND RAILROAD COMPANY; COLORADO & SOUTHERN RAILWAY COMPANY; SOUTHERN KANSAS RAILWAY OF TEXAS; WEATHERFORD, MINERAL WELLS & NORTHWESTERN RAILWAY COMPANY; WICHITA VALLEY RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO & ALTON RAILWAY COMPANY; CHICAGO GREAT WESTERN RAILWAY COMPANY; CHICAGO & EASTERN ILLINOIS RAILROAD

COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; ILLINOIS CENTRAL RAILROAD COMPANY; WABASH RAILROAD COMPANY.

Decided August 16, 1905.

This case relates to advances in rates on cattle from points north of the Texas quarantine line to northern ranges in Colorado, Western Nebraska, Wyoming, Montana, and North and South Dakota, and to advances in rates from points in Texas, Colorado, Wyoming, Nebraska, Kansas, Indian Territory and New Mexico to Chicago, St. Louis and Kansas City. An appendix to the decision shows the advances in detail. After considering cost to the carriers at originating and delivering points, cost and maintenance of equipment, expense of unloading and reloading in transit incident to feeding, watering and resting the stock, character of the movement, number of cars in trains, average loading, volume and desirability of the traffic, return of empty cars, liability to damage, cost of carriage, increased cost of producing live stock, decreased selling price, method of making the advanced rates, disappearance of competition, cost of railroad labor and supplies, improved methods of operation and increased general traffic, mileage revenue per ton per car and per train, and other pertinent circumstances and conditions, *Held:*

1. That defendants' advances in live stock rates during 1903, as shown in the appendix, were unjust and unreasonable, and that the present rates are unjust and unreasonable to the extent of such advances.

2. That the present terminal charge for delivery of live stock at the Union Stock Yards in Chicago, amounting to about $2.00 per car, is unjust and unreasonable, and that a reasonable charge would be $1.00 per car for such terminal services.

Cowan & Burney for complainant.

Ed Baxter and *J. W. Terry* for Atchison, Topeka & Santa Fe Ry. Co. and Gulf, Colorado & Santa Fe Ry. Co.

Ed Baxter and *T. F. West* for St. Louis & San Francisco R. R. Co.

Ed Baxter for Chicago, Rock Island & Pacific Ry. Co.; Choctaw, Oklahoma & Gulf R. R. Co.; Cane Belt R. R. Co.; Chicago, Rock Island & Gulf Ry. Co.; Chicago, Rock Island &

Mexico Ry. Co.; Chicago, Rock Island & Texas Ry. Co.; Choctaw, Oklahoma & Texas R. R. Co.; Fort Worth & Rio Grande R. R. Co.; Gulf, Beaumont & Great Northern Ry. Co.; Gulf, Beaumont & Kansas City Ry. Co.; Paris & Great Northern R. R. Co.; Pecos Valley & Northeastern Ry. Co.; Pecos & Northern Texas Ry. Co.; Pecos River R. R. Co.; Red River, Texas & Southern Ry. Co.; St. Louis, San Francisco & Texas Ry. Co.; Southern Kansas Ry. of Texas; Chicago, Burlington & Quincy Ry. Co.; Chicago & Northwestern Ry. Co.; Chicago & Alton Ry. Co.; Chicago & Eastern Illinois R. R. Co.; Chicago, Milwaukee & St. Paul Ry. Co.; Illinois Central R. R. Co.

E. B. Parker for Houston & Shreveport R. R. Co.; Union Pacific R. R. Co.; Galveston, Harrisburg & San Antonio Ry. Co.; Galveston, Houston & Henderson R. R. Co.; Galveston, Houston & Northern Ry. Co.; Gulf, Western Texas & Pacific Ry. Co.; Houston, East & West Texas Ry. Co.; Houston & Texas Central R. R. Co.; New York, Texas & Mexican Ry. Co.; San Antonio & Gulf R. R. Co.

T. S. Miller for Missouri, Kansas & Texas Ry. Co.; Missouri, Kansas & Texas Ry. Co. of Texas.

T. J. Freeman for Missouri Pacific Ry. Co.; St. Louis, Iron Mountain & Southern Ry. Co.; International & Great Northern Ry. Co.; Texas & Pacific Ry. Co.; Weatherford, Mineral Wells & Northwestern Ry. Co.

M. A. Spoontz for Fort Worth & Denver City Ry. Co.; Colorado & Southern Ry. Co.

A. W. Houston for San Antonio & Aransas Pass Ry. Co.

T. F. West for St. Louis Southwestern Ry. Co. of Texas.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

The complainant is a voluntary association for the purpose of guarding and protecting the interests of cattlemen who are its members. It maintains a regular organization, holds meetings at stated intervals and collects money from its members which it expends in carrying out the purposes of the organiza-

tion, one of which is to secure just rates and adequate facilities for the transportation of cattle by rail. Most of its members either reside or have their principal place of business in the state of Texas, but they are also engaged in livestock operations in nearly every state and territory west of the Missouri River, except the states of the Pacific Coast. The defendants are numerous railroad companies engaged in the interstate transportation of livestock in the territory in which the members of the complainant association operate, and the complaint is that the rates charged for such transportation are unjust and unreasonable.

After the filing of the petition in this case the Commission, acting upon numerous complaints from shippers of livestock in territory north of Texas and west of the Missouri River to the effect that the railways were advancing their rates for the transportation of livestock while the service rendered was most unsatisfactory, instituted a proceeding of investigation upon its own motion. This is carried upon the docket of the Commission as No. 755, and is entitled, In the Matter of Rates, Facilities and Practices Applied by Carriers in the Transportation of Cattle from Producing, Grazing and Feeding Sections West of the Missouri River. A hearing which occupied several days was had in this matter at Denver. At its conclusion it appeared to the Commission and all parties interested, including the defendants, that the same question which was presented in that proceeding was also raised and could properly be determined in the petition which had already been filed by the Cattle Raisers' Association of Texas and which is now under consideration, and it was agreed that further proceedings in that case should be suspended and that the testimony already taken should be treated as taken in the suit of the Cattle Raisers' Association.

The rates challenged as unlawful in this case are of two kinds.

First. What is known as the quarantine line runs in an irregular direction through the state of Texas east and west. Cattle bred on the south of this line cannot, except for a limited period, be taken north for any purpose except for immediate slaughter. If they are grazed or fed at any point outside the

state it must be in pastures or at places south of the quarantine line. There are such pastures in Indian and Oklahoma Territories to which Texas cattle are taken in large numbers, but the railway rates to these grazing fields are not complained of in this proceeding. Cattle bred north of the quarantine line in Texas and to some extent in New Mexico, Arizona and western Oklahoma are sold in large numbers at the age of two years or older for the purpose of being taken to what are known as the northern ranges to be fattened for market. These ranges or pastures are located in Colorado, Western Nebraska, Wyoming, Montana, North and South Dakota. Cattle are also taken from north of the quarantine line in Texas to pastures in Southern Kansas, but this is usually upon a rate to some market of consumption with a feeding in transit privilege and is not, therefore, properly included in the class of rates now under consideration.

There are many stations in Texas at which cattle are taken up for carriage to the northern ranges and many points at which they are set down in those ranges, but it was said that there existed a general relation in rates between the different points and that Amarillo, Texas, might be taken as fairly illustrative as a point of origin. The table below shows rates to date on range cattle from May 1, 1888, from Amarillo to Chugwater, Wyo., and from March 11, 1891, to Orin Junction, Wyoming. The short line distances are, to Chugwater 646 and to Orin Junction 729 miles.

TO / From Amarillo, Texas.	CHUGWATER, WYO. Per Car 36 Feet.	CHUGWATER, WYO. Equivalent Rate Per 100 lbs., based on Min. wt. 22,000 lbs.	ORIN JUNCTION, WYO. Per Car 36 Feet.	ORIN JUNCTION, WYO. Equivalent Rate Per 100 lbs., based on Min. wt. 22,000 lbs.
May 1, 1888	$ 63.25	28.8		
May 31, 1888	63.25	28.8		
January 1, 1889	63.25	28.8		
March 11, 1890	66.00	30		
March 11, 1891	80.30	36½	$ 80.30	36½
October 10, 1892	80.30	36½	80.30	36½
March 19, 1893	80.30	36½	80.30	36½
April 1, 1894	71.50	32½	71.50	32½
May 18, 1894	65.00	29.6	65.00	29.6
April 1, 1895	82.50 a	37½ a	82.50 a	37½ a
April 20, 1895	71.50 a	32½ a	71.50 a	32½ a
March 15, 1896	79.75 a	36¼ a	79.75 a	36¼ a
May 5, 1896	71.50 a	32½ a	71.50 a	32½ a
May 8, 1896	55.00 a	25 a	55.00 a	25 a
May 23, 1896	55.00 a	25 a	55.00 a	25 a
September 29, 1896	71.50 a	32½ a	71.50 a	32½ a
March 22, 1897	71.50 a	32½ a	71.50 a	32½ a
May 7, 1897	55.00 a	25 a	55.00 a	25 a
February 1, 1898	65.00 a	29.6 a	65.00 a	29.6 a
March 22, 1902	75.00	34.1	75.00	34.1
March 25, 1903 to date	81.50	37.1	81.50	37.1

a Applies on cattle in train loads of not less than ten cars. In less than train loads of ten cars rates will be $5.00 per standard car higher than authorized on train load shipments.

The tariffs on file with the Commission which are applicable to the movement of stock cattle to the northern ranges are in

great confusion and it is difficult to determine with accuracy the history of these rates to all such points, but the testimony apparently shows and the tariffs indicate that rates to the two stations above named are fairly representative of range destinations in general and that the table above given fairly states the history of these rates.

Second. The rates mainly put in issue by this proceeding are those from various maturing points to markets of consumption. As already said cattle from south of the quarantine line cannot be taken north except for immediate slaughter. Cattle from north of the quarantine line are frequently taken to market and then shipped out into the country for the purpose of being fattened. The markets in question are Chicago, St. Louis, Kansas City, St. Joseph and Omaha, of which only the first three need be considered in this report.

The original petition embraced rates to these markets and also to St. Paul from almost all territory west of the Missouri River and from North and South Dakota, but certain changes made subsequently to the filing of the petition in the tariffs of the Great Northern and Northern Pacific roads have led to a discontinuance of proceedings against those companies. The territory now involved is western Nebraska and Kansas, Wyoming, eastern Colorado, including Colorado Common Points and perhaps some points farther west in southern Colorado, Indian Territory, Oklahoma Territory, New Mexico and Texas.

Many hundreds of rates are involved in this territory but here, as in case of the range rates, there exists a certain relation between the different markets and also between the points of origin. The amount of the rates and their history will sufficiently appear from a few illustrative examples. For this purpose we select Fort Worth, Pecos and San Angelo in the state of Texas, Durant, Indian Territory, Goodland, Kansas, Denver, Colorado, and Cheyenne, Wyoming.

FROM FORT WORTH TO
KANSAS CITY and ST. JOSEPH.
507 Miles. 570 Miles.

	CL	Per *Cwt.* (Cents)
Nov. 15, 1888	62 50	
Feb. 10, 1889		31½
Oct. 25, 1889		28½
Feb. 17, 1890		33½
Mar. 20, 1890		31
May 10, 1890		29½
Sept. 15, 1890		30
May 20, 1891		33
Aug. 27, 1896	57 30	
Oct. 1, 1896		28
July 1, 1897		27
Oct. 3, 1897		28
Feb. 1, 1899		30½
Dec. 15, 1899		33½
Mar. 5, 1903		36½

ST. LOUIS—709 Miles.

	CL	Per Cwt. (Cents)
Nov. 15, 1888	80 00	
Feb. 10, 1889		40
Sept. 1, 1889		37
Mar. 20, 1890		36
May 10, 1890		34½
Sept. 15, 1890		36
May 20, 1891		30
Oct. 1, 1896		34
July 1, 1897		33
Oct. 5, 1897		34
Feb. 1, 1899		36½
Feb. 6, 1899		31½
Apr. 15, 1899		36½
Dec. 15, 1899		39½
Mar. 5, 1903		42½

CHICAGO—955 Miles.

	CL	Per Cwt. (Cents)
Nov. 15, 1888	102 50	
Feb. 10, 1889		51¼
Sept. 1, 1889		48¼
Feb. 17, 1890		46
Mar. 20, 1890	80 75	

CHICAGO—955 Miles.—Continued.

	CL	Per *Cwt.* (Cents)
May 10, 1890		41
Sept. 15, 1890	87 90	
May 20, 1891	93 60	
Feb. 24, 1896		49¼
Oct. 1, 1896		44¼
July 1, 1897		43¼
Oct. 5, 1897		44¼
May 17, 1898		38
July 25, 1898		44¼
Feb. 1, 1899		46¾
Feb. 6, 1899		41¾
Apr. 15, 1899		46¾
Dec. 15, 1899		49¾
Aug. 26, 1902		45½
Jan. 16, 1903		49¾
Mar. 5, 1903		52¾

FROM SAN ANGELO TO
KANSAS CITY and ST. JOSEPH.
742 Miles. 803 Miles.

Sept. 2, 1888	62 50	
Sept. 30, 1888	65 00	
Jan. 10, 1889	70 00	
Feb. 10, 1889		35
July 4, 1889		35
Feb. 17, 1890		39
Mar. 20, 1890		38
May 11, 1890		36
Sept. 15, 1890		36½
May 20, 1891		39½
Sept. 21, 1896		36
Oct. 1, 1896		36½
Nov. 23, 1896		34½
Feb. 1, 1899		37
Dec. 15, 1899		40
Mar. 5, 1903		43

ST. LOUIS—1047 Miles.

Date	CL	Per *Cwt.* (Cents)
Jan. 10, 1889	87 50	
Feb. 10, 1889		44
July 2, 1889		44
Mar. 20, 1890		42
May 11, 1890		40
Sept. 15, 1890		42½
May 20, 1891		45½
Sept. 21, 1896		42
Oct. 1, 1896		42½
Nov. 23, 1896		40½
Feb. 1, 1899		43
Dec. 15, 1899		46
Mar. 5, 1903		49
July 13, 1903		49

CHICAGO—1143 Miles.

Jan. 20, 1889	110 00	
July 2, 1889		55½
Feb. 18, 1890		53
Mar. 20, 1890		49½
May 4, 1890		47 8/10
May 11, 1890		45 8/10
Sept. 15, 1890		52¾
Apr. 16, 1891	100 25	
May 20, 1891	105 95	
Sept. 21, 1896		52¼
Oct. 1, 1896		52¾
Nov. 23, 1896		50¾
May 17, 1898		44½
July 25, 1898		50¾
Feb. 1, 1899		53¼
Dec. 15, 1899		56¼
Aug. 11, 1902		52
Jan. 16, 1903		56¼
Mar. 5, 1903		59¼
July 13, 1903		59¼

FROM PECOS TO
KANSAS CITY and ST. JOSEPH.
907 Miles. 970 Miles.

	CL	Per *Cwt.* (Cents)
May 10, 1887	102 50	
July 3, 1888	85 00	
Feb. 10, 1889		42½
Mar. 20, 1890		47½
May 10, 1890		45½
Sept. 15, 1890		46
May 20, 1891		49
Oct. 1, 1896		44
Oct. 7, 1896		49
Mar. 3, 1899		51½
Dec. 15, 1899		54½
Nov. 8, 1902		52½
Mar. 5, 1903		55½

ST. LOUIS—1109 Miles.

June 23, 1887	102 50	
Feb. 10, 1889		51½
May 10, 1890		49½
Sept. 15, 1890		52
May 20, 1891		55
Nov. 6, 1896		55
Mar. 3, 1899		57½
Dec. 15, 1899		60½
Mar. 5, 1903		63½
July 13, 1903		63½

CHICAGO—1355 Miles.

Apr. 8, 1887	135 00	
July 6, 1887	122 50	
Jan. 20, 1889	125 00	
Feb. 10, 1889		62¾
Feb. 1, 1890		60½
Mar. 20, 1890	112 10	
May 10, 1890	108 30	
Sept. 15, 1890	118 30	
May 21, 1891	124 00	
May 24, 1894	115 60	
June 1, 1894	124 00	
Oct. 1, 1896	114 50	

CHICAGO—1355 Miles—Continued.

	CL	Per Cwt. (Cents)
Nov. 13, 1896	124 00	
Nov. 26, 1896		65¼
May 17, 1898		59
July 25, 1898		65¼
Dec. 15, 1898		64
Jan. 1, 1899		65¼
Mar. 3, 1899		67¾
Dec. 15, 1899		70¾
Mar. 5, 1903		73¾

FROM DURANT, I. T., TO
KANSAS CITY and ST. JOSEPH.
391 Miles. 454 Miles.

Dec. 15, 1888	52 50	
Feb. 18, 1889		26¼
July 12, 1889		27
Mar. 27, 1890		23½
July 13, 1890		31
Aug. 27, 1890		29½
Sept. 15, 1890		27
May 20, 1891		30
Jan. 1, 1896		32
Mar. 3, 1896		33
Apr. 30, 1896		32
July 15, 1896		33
Sept. 8, 1896		30
Oct. 1, 1896		28
Mar. 19, 1899		30½
Dec. 1, 1899		33½
Aug. 15, 1902		32
Sept. 14, 1902		31½
Mar. 5, 1903		35½

ST. LOUIS—641 Miles.

Dec. 15, 1888	72 50	
Feb. 18, 1889		36¼
July 12, 1889		37½
Sept. 5, 1889		39½
Jan. 8, 1890		35¾
Feb. 5, 1890		33½
Mar. 27, 1890		36

ST. LOUIS—641 Miles—Continued.

	CL	Per *Cwt.* (Cents)
Aug. 27, 1890		37
Sept. 15, 1890		36
May 20, 1891		38½
Mar. 6, 1896		39
Sept. 8, 1896		36
Oct. 1, 1896		34
Mar. 5, 1899		36½
Dec. 1, 1899		39½
Sept. 14, 1902		39
Mar. 5, 1903		41½

CHICAGO—840 Miles.

Dec. 15, 1888	95 00	
Feb. 18, 1889		47½
July 12, 1889		47
Sept. 5, 1889		47¼
Jan. 8, 1890		44½
Feb. 5, 1890		38½
Mar. 27, 1890		42½
May 22, 1890		46¼
Aug. 27, 1890		48¼
Sept. 15, 1890		42½
Jan. 24, 1891		37
May 20, 1891		48¼
Aug. 19, 1891		47¾
Jan. 15, 1896		47¼
Mar. 6, 1896		49¼
Sept. 8, 1896		46¼
Oct. 1, 1896		44¼
Oct. 9, 1898		43¼
Mar. 5, 1899		45¾
Dec. 1, 1899		48¾
Oct. 8, 1902		48¾
Mar. 5, 1903		50¼

FROM GOODLAND, KAN., TO
KANSAS CITY and ST. JOSEPH.
426 Miles.

	CL	Per *Cwt.* (Cents)
July 15, 1888	45 00	
Jan. 1, 1896		21½
Oct. 1, 1896	45 00	
Aug. 10, 1897		21½
Feb. 26, 1898	45 00	
Jan. 15, 1899	48 00	
Dec. 1, 1899		23
July 5, 1900		24
Apr. 20, 1902		25
Sept. 1, 1903		25½

FROM DENVER TO CHICAGO.
1025 Miles.

	Per car 36 feet.	Per 100 lbs. C. L. Min. 22,000 lbs.	Per 100 lbs. C. L. Min. 24,000 lbs.
July 23, 1888	$115.50		
Aug. 24, 1889	115.50		
Sept. 10, 1889	107.80		
Aug. 1, 1890	94.60		
Aug. 25, 1890	104.50		
Jan. 1, 1896		47½	
Sept. 15, 1896	104.50		
Aug. 10, 1897			47
July 9, 1902		47	
Sept. 5, 1903 to date.		49	

FROM DENVER TO KANSAS CITY.
639 Miles.

July 23, 1888	$71.50		
Aug. 24, 1889	71.50		
Sept. 10, 1889	71.50		
Aug. 1, 1890	71.50		
Aug. 25, 1890	71.50		
Jan. 1, 1896		31	
Sept. 15, 1896	71.50		
Aug. 10, 1897			31
July 9, 1902		31	
Sept. 5, 1903 to date.		33	

FROM DENVER TO OMAHA.
538 Miles.

	Per car 36 feet.	Per 100 lbs. C. L. Min. 22,000 lbs.	Per 100 lbs. C. L. Min. 24,000 lbs.
July 23, 1888			
Aug. 24, 1889	$71.50		
Sept. 10, 1889	71.50		
Aug. 1, 1890	71.50		
Aug. 25, 1890	71.50		
Jan. 1, 1896		31	
Sept. 15, 1896	71.50		
Aug. 10, 1897			31
July 9, 1902		31	
Sept. 5, 1903 to date.		33	

FROM CHEYENNE, WYOMING, TO KANSAS CITY.
685 Miles.

	CL	Per *Cwt.* (Cents)
Apr. 5, 1887	72 50	
Nov. 15, 1887	65 00	
Apr. 2, 1894	63 00	
Jan. 1, 1896		31
Sept. 22, 1896	65 00	
June 1, 1902		31
Sept. 22, 1903		33
Oct. 3, 1904		30

CHICAGO—1009 Miles.

July 1, 1887	115 00	
Oct. 5, 1897	98 00	
Jan. 6, 1890	95 00	
Apr. 25, 1890	87 65	
July 11, 1890	96 00	
Sept. 21, 1891	95 00	
Mar. 23, 1899		47½
Apr. 14, 1902	104 78	
Nov. 28, 1902		47
Jan. 15, 1903		47
Sept. 5, 1903		48

SOUTH OMAHA—512 Miles.

	CL	Per Cwt. (Cents)
Apr. 5, 1887	72 50	
Aug. 5, 1887	63 00	
Jan. 1, 1896		31
Sept. 22, 1896	65 00	
June 8, 1900		31
Mar. 3, 1904		32
Oct. 3, 1904		29

An examination of the table giving rates for the movement of range cattle shows that these rates were advanced $10 per car in March, 1902, from what they had been for the preceding four years and $6.50 in March, 1903, over the previous year and that the present rate is very much higher than the average which has prevailed in the past.

It may also be noted at this point that rates for the transportation of range cattle are often lower, than corresponding rates for the transportation of beef cattle. These stock cattle from Texas to the northern ranges are younger and in poorer condition than beef cattle. The single animal weighs much less and the carloading is much less. After these cattle have matured upon the northern ranges they load perhaps 25,000 pounds to the car while the loading to those ranges will not exceed 20,000 pounds per car. The value of the animals is also much less and the transportation itself is in the nature of an additional haul. If the steer is fattened in Texas for the Chicago market it is transported perhaps 1,000 miles in all while if it is matured in the north the railroad haul would exceed 2,000 miles. For these and other reasons the rate on stock cattle generally is and in our opinion should be lower than that on beef cattle, certainly when named by the carload, and when there is a well defined and extensive movement as in this instance.

Turning now to an examination of the rates from maturing points to the markets we find that the rates now in force are in all cases an advance over those previously in effect. The first table treats of rates from Fort Worth to Kansas City.

It will be seen from this that the first rate was by the carload. The first rate by the hundred pounds was effective February 10, 1889, and was 31½ cents. In 1891 the rate was advanced, after several fluctuations to 33 cents where it continued for something over five years. In 1896 it was reduced to 28 cents continuing there until February 1, 1899, when it was advanced to 30½ cents. On December 15, 1899, it was again advanced to 33½ cents and on March 5, 1903, still further advanced to 36½ cents, which is the rate now in force. The present rate is materially higher than any rate ever in effect since rates were filed with the Commission. It is ten per cent higher than the rate in effect from 1891 to 1896 and nearly 25 per cent higher than the rate in effect from 1896 to 1899.

Rates from Fort Worth to St. Louis and Chicago have varied substantially as those to Kansas City. What is true of Fort Worth is true of Texas points generally. While rates from other points in Texas to these three markets have not varied exactly with the Fort Worth rate they have done so substantially. It can be safely affirmed that rates to these markets from Texas producing districts are ten per cent higher today than they ever were from the date tariffs were first filed to March 15, 1903, and 25 per cent higher than from 1896 to 1899.

An examination of the table from Durant, Indian Territory, shows the history of rates from that point to have been about the same as from Texas points; and an inspection of the schedules from many other stations in Indian Territory and Oklahoma Territory leads to the conclusion that while there are exceptions depending upon the location of the points of shipment, as a rule the advances are certainly as great as from Texas.

The history of rates from western Kansas, from Colorado Common Points and east, and from western Nebraska has been somewhat different. It will be seen by consulting the tables which give these rates from Goodland, Kansas, Denver, Colorado, and Cheyenne, Wyoming, that rates were usually upon a carload basis down to 1897 or thereabouts, when they

were changed to cents per hundred pounds with a minimum of 22,000 pounds. Assuming that this minimum correctly represented the previous loading from these points rates remained nearly stationary until September, 1903, when an advance of 2 and 3 cents per hundred pounds was made. The Cheyenne rate to the Missouri River was reduced after the filing of this complaint from 33 cents to 30 cents which made it as low as it had ever been when stated in cents per hundred pounds.

The complainants insisted that the change from dollars per car to cents per hundred pounds worked a substantial increase in the cost of transporting cattle to market. The carriers in making this change seem to have taken 22,000 or thereabouts as a divisor, to have divided the dollars per car by this assumed carloading and thus obtained the rate by the hundred, which they put in effect. If in point of fact the loading of cars had previously exceeded 22,000 pounds it is evident that the imposing of a rate per hundred pounds arrived at as above would compel a shipper to pay more than he had previously paid. Whether the railroad company would receive more would depend upon whether actual shipments exceeded the minimum of 22,000 pounds fixed by the tariff. Shipments from these points are usually of fat cattle for slaughter, whereas, as we have seen, shipments from Texas include cattle which are to be taken out from the market and fattened. The testimony indicates and we find that previous to the change to cents per hundred pounds actual loadings of beef cattle in 36-foot cars were considerably heavier than 22,000 pounds, probably from 24,000 to 26,000 pounds. Actual loadings from this territory of beef cattle at the present time run from 23,000 to 25,000 pounds and sometimes more. The rate in effect upon the Union Pacific from Cheyenne to Kansas City and Omaha for nearly fifteen years from November 15, 1887, was $65 per car. This on a minimum basis of 22,000 pounds would be equivalent to a rate of almost exactly 30 cents per hundred pounds. If, however, the loading was 24,000 pounds the equivalent would be but 27 cents per hundred. It is evident, therefore, that when the Union Pacific substituted on June 1, 1902, a rate of 31 cents in place of its former rate

of $65 per car it in effect increased that rate from 3 to 4 cents per hundred pounds. The present rate of 30 cents is a distinct advance on the rate actually paid by the shipper previous to that date. The railroad company also receives for its services more than $65 per car since a loading of 24,000 pounds at 30 cents per hundred would amount to $72 per car, an increase of more than ten per cent over the former rate. The same result was accomplished by the change from dollars per car on other lines although the advance may have been somewhat less farther south where the loadings are lighter.

It has been seen that there is a large movement of cattle from Texas to the pastures of southern Kansas. These cattle leave Texas in the spring, are pastured in Kansas or similar territory during the summer, and are sent on to market in the late summer or fall. They are usually handled upon what is known as a feeding in transit rate. The carload is shipped upon the rate from the point of origin to Kansas City with the privilege of stopping off the cattle, feeding them during the summer and sending them on to market in the fall. For this privilege a charge of $10 per car was formerly made. On June 21, 1901, this charge was changed from $10 per car to 7 cents per hundred pounds, thus working an advance of $5.40 per car upon a minimum of 22,000 pounds.

While the foregoing tables, with the explanation given, sufficiently show the history of these rates for the purpose of this report, we have also caused to be prepared a statement giving in detail all advances in cattle rates from the territory in question from January 1, 1899, down to the date of the filing of this petition. This statement is set forth in an appendix hereto and is made a part of this report.

The petition in this case is directed against these advances and the complainant insists that the fact that the present rates are higher than those long voluntarily maintained by the defendants is well-nigh conclusive evidence of the unreasonableness of the tariffs now in effect. The defendants answer that these cattle rates have been made in the past under stress of such severe competition that they furnish no fair standard of reasonableness.

When cattle first began to move from the breeding pastures of Texas to the feeding pastures of the north they were uniformly driven. The country through which they passed was uninhabited. Large droves were started from Texas in early spring and worked north as the summer advanced, feeding upon the unoccupied lands through which they passed. A progress of ten or fifteen miles per day could be made and the only expense was that for the necessary help required to keep the herd together. It was said that the cost per head of driving cattle from Texas to the northern ranges was $1.25 to $1.50. The disadvantages were the length of time required and the poor condition in which the cattle reached their destination.

As the country settled up conditions changed. Lands were fenced. Feed and water came to be private property. The driving of cattle became more difficult and expensive and finally altogether impracticable, so that since 1887 it has not been much resorted to. Today the only means of transporting these cattle from the Texas pastures to the northern ranges is by rail. It is, however, certain that when the railroads first entered this business their rates were of necessity made in competition with the drive. Perhaps 35 head of cattle on the average of the age and character which are transported from these Texas pastures can be loaded into a 36-foot car. The cost of driving these cattle at that time was not over $1.50 per head or about $50 per car. The cattle owner would pay the railroad more than the cost of driving since his stock reached the northern pasturage quicker and was, therefore, in better condition in the fall; there was a point beyond which he would not go so long as the trail was open to him and these early carload rates were made in competition with the drive. For the last fifteen years, however, the possibility of driving cattle has produced very little effect upon these rates, except as it had led to the establishment of a low rate at the outset.

The trail has had little or nothing to do with the market rates involved. At one time cattle were uniformly driven to market for slaughter, but the expense and difficulty of driving cattle in large numbers in an inhabited country are so great that

any rate involved in this proceeding would be much preferable to that method of transportation. The lowest livestock rate with which we are familiar is that between Chicago and New York, 28 cents per hundred pounds for 1,000 miles with a deduction of 3 cents per hundred for lighterage at New York. This rate certainly was not forced by competition of the trail. An examination of the tables of rates above given will show that the lowest rates have obtained since the drive entirely disappeared. It is our impression that the defendants overestimate the effect of this species of competition upon these cattle rates. There are, however, other kinds of competition which have tended to force down both these range and market rates and that competition has been acute.

The reasons for this are obvious. Most freight must be taken up at a particular station, and is not, therefore, tributary to more than one railroad except at points of intersection. Grain, hay and similar traffic can be hauled a few miles but the distance is limited. Cattle upon the other hand, under conditions which have prevailed in Texas until very recently, could be driven without much expense for 50 or 75 miles. The product of a ranch was not necessarily shipped to market by the railroad whose station was nearest the gathering point of that ranch but might be sent by some line many miles distant. This rendered the diversion of that traffic possible.

The cattle business of Texas in the past has been mainly in the hands of the large operators. A single individual would ship cattle in train loads. The concentration of traffic makes it possible to deal with one person for large quantities of business and induces, therefore, a closer rate for that business, just as the large order commands a better price than the small order.

From the standpoint of the Texas railway this traffic has been extremely important. The gross revenues of these Texas lines and other lines in this western and southwestern territory have not been large, the cattle traffic has been one of the principal sources of revenue and this has caused the carriers to give special attention to that business.

From these and other causes there has certainly resulted a most active competition. Up to 1900 or thereabout there was

persistent solicitation by the agents of the carriers; extraordinary inducements were offered in the way of special service, special trains, etc.; rebates were habitually paid to all large shippers of from $5 to $20 per car.

This did not result in rate wars. It appears from an examination of the changes in rates from Fort Worth to Kansas City that only 14 different rates have been published in 16 years and that of the 13 changes five were made in the year 1890 and three in the year 1899, none of them considerable in amount. While these cattle rates have been held down by these competitive conditions, they have never been the spasmodic and abnormal rates which result from rate wars. The competition was rather in departures from the published rate. Since 1900 rates have been better maintained and since 1902, according to the testimony, absolutely maintained. It may also be noticed in this connection that the private car companies which furnish many of these cattle cars to the railways have in the past frequently paid shippers from $1 to $2 per car as an inducement to use their particular style of car. We find that up to about 1900 competition for this cattle traffic, especially in the southwest territory, was more acute than for most other kinds of traffic.

The defendants also point, as a reason for concluding that these cattle rates have been too low in the past and that the recent advances are reasonable, to certain disabilities, so to speak, which are peculiar to the cattle traffic and which may be at this point referred to.

Special facilities are said to be required. It is common knowledge that live stock is transported in a car of peculiar construction, ordinarily known as a cattle car. This costs about the same to build as the ordinary box car. It perhaps depreciates somewhat more rapidly since the bedding tends to rot the bottom of the posts and the floor. Such equipment can be hired as needed from private companies at six mills per mile for the total miles run. This is the amount formerly paid by railroads in settlement of car mileage among each other and is nearly equivalent to the present charge of 20 cents per day. The actual cost to the railroads as a whole of maintaining and

renewing their car equipment has been not far from six mills per car mile. We do not find that the use of the cattle car justifies a higher rate on that traffic, since the cost of providing such equipment is little if any more.

It is also said that the use of a special caboose with these cattle trains is required. The cattle rate ordinarily permits the shipper to send with his shipment one or more attendants who look after the cattle en route. These men ride while the train is in motion in the caboose. The ordinary caboose which has been generally in use until recently is sufficiently large for that purpose, but it appears that at the present time a much smaller caboose is used upon many freight trains which would not be sufficiently large to accommodate these attendants. Using the larger caboose does add somewhat to the cost of transporting live stock as compared with other freight but while this disadvantage is real it is so slight as to be hardly appreciable.

These attendants return free upon the regular passenger trains of the defendants and it was urged that this should be charged up against this traffic at the first class passenger fare for the return trip. While we cannot assent to this proposition, since the actual cost of returning these men is slight, their return transportation does cost something and is an expense peculiar to the movement of this traffic.

Usually car load freight is loaded by the shipper. The only facilities which the railroad provides in connection with that loading is a track upon which the car stands and a yard over which it can be approached. In point of fact carload freight is frequently loaded at the warehouse of the shipper and entails sometimes a greater and sometimes a less expense upon the carrier according to conditions. In case of live stock it is necessary to provide at the loading station pens to contain the stock while awaiting loading, and shutes through which the animals walk into the car. The cost of these depends upon the extent of the shipments from that station. In our opinion the cost of constructing and maintaining these loading pens and shutes has been generally overstated by the witnesses for the defendants. Under the stock and bond law of the state of Texas the Texas Commission values as a separate item these

stock pens and the expense to the carriers in that state, which is largely involved in this proceeding, is not great. While it is impossible to make any exact finding we think and find that 50 cents per carload of stock handled would on the average be a liberal allowance on this account.

Stock cars must be bedded and this service is borne by the carrier. The ordinary material used is sand, but hay and straw are sometimes used. The carrier also loads the cattle or assists the owner in loading them at the receiving station. The ordinary price paid for loading and bedding in Texas appears to be 50 cents per car, the railroad furnishing the material, and we find this to be the average cost of that service.

Counsel for the complainant has made calculation from the report of the Atchison, Topeka & Santa Fe Railway which shows that the cost to that company of maintaining its stock yards, bedding and loading cattle cars is on the average 90 cents per car. We have not verified this calculation, but its correctness is not denied by opposing counsel. Independent of this our impression from the testimony would have been and we find that $1.25 per car would fairly cover what may be called the originating expense peculiar to this traffic, the construction and maintenance of stock pens, and the bedding and loading of the car.

The defendants also claim that an additional unloading expense attaches to this traffic over other freight. Ordinarily carload freight is unloaded by the shipper. Cattle for these various markets are usually unloaded through the medium of some stock yards company the carrier paying to that company for this service a price which varies in case of the different markets. The total expense of transporting cattle from its lines at Corwith just outside the city of Chicago to the Union Stock Yards, unloading the stock, bringing the cars back to Corwith, and maintaining an agency at the Union Stock Yards is, in case of the Santa Fe Company, a trifle less than $2.00 per car; in case of most other companies it is somewhat more. It does not clearly appear what the expense of delivering live stock is at Kansas City, but it is not apparently greater than $2.00 per carload.

Mr. Peabody, who was the principal witness in behalf of the defendants as to the expense of handling this traffic and whose testimony is referred to later, testified that an actual account kept showed that the cost to his company of delivering carload freight in the city of Chicago both to consignees at that point and to connections for shipment beyond was $5.40 per car and that it was $2.40 at Kansas City. At most places the expense would be much less. We find on the whole that the expense of delivering live stock, including the unloading, does not exceed that of delivering other carload freight.

Cattle cars must be cleaned and disinfected. Some railroads perform this service themselves while others contract it. It appeared that the contract price in one case was 40 cents per car. When cattle cars are sent back without loads for a return load of cattle they are not usually cleaned every trip. Nor do they need much disinfecting unless they have carried cattle from below the quarantine line. This charge should not, therefore, be as great on the average as the cost of cleaning and disinfecting a car. We find that thirty cents would be a fair allowance.

The federal statute requires that live stock shall be unloaded for the purpose of feeding and watering at least every 28 hours. When the train consists entirely of live stock cars it must be stopped for that purpose; when there are other cars in the train the live stock cars must be set out and subsequently attached to another train. This entails additional expense, but it is impossible to estimate it in dollars and cents.

The feed which is supplied to the cattle at these feeding stations is paid for by the shipper and the charge is usually from two to four times its actual value. If the railroad company supplies the pens in which the stock is fed and watered it gets the profit on the feed. Usually these facilities are furnished by some private company which unloads and loads the stock for the profit it makes on the supplies furnished. We find that the profit on the feed will pay the cost of furnishing unloading pens and expense of the mere unloading and loading.

It is assumed and assented to by all that no traffic demands greater expedition than live stock. Cattle shrink in weight

and deteriorate in appearance and, therefore, in selling value rapidly while en route, and the amount of the loss is dependent upon the length of time they are upon the journey. To secure the necessary expedition adds to the cost of the transportation. It requires that cattle trains shall have the right of way over other trains and that they shall be made lighter than they otherwise would be. Of this there can be no doubt or dispute, but of the extent to which all this embarrasses the railroad in its operations and adds to the expense there is much dispute.

Railroad witnesses testify that stock trains were given a schedule of approximately 20 miles an hour and that all other trains except passenger trains were kept out of the way on their account. Other witnesses in considerable number, who had attended these shipments, testified on the other hand that very little attention was paid in the meeting of trains as to which train contained live stock. The running time actually made between various points shows that while stock trains may occasionally make 20 miles an hour it is a very unusual occurrence, the ordinary time being from 12 to 18 miles an hour not including stops to feed and water. This does not require great interference with other trains under ordinary circumstances.

There is also great difference of opinion as to the size of the trains which are hauled. Here again the railroad witnesses testified without exception that stock trains were of necessity much shorter and lighter than dead freight trains, while the contrary opinion was expressed on the other side. For the purpose of determining what the fact was we required these defendants to state the consist of all freight trains moving toward these markets from certain division points upon the different lines for the first fifteen days of April and October, 1903. These statements showed the number and make-up of trains consisting exclusively of live stock, of trains in which live stock was carried and of dead freight trains, including the number of loaded and empty cars in each train.

The result of these statements is instructive and somewhat surprising in view of the testimony which had been given. They establish beyond possibility of doubt and we find that on

the whole, during the periods covered, stock trains on the average contained more cars than dead freight trains, and that trains carrying live stock and other freight also contained more cars than dead freight trains. It also appeared that the number of empties was much greater in dead freight trains than in those carrying live stock. All this apparently grows out of the fact that while more cars may be hauled in slow trains devoted to dead freight, the character of this live stock traffic is such that trains of live stock, and trains containing live stock are invariably filled up to their full capacity. Every railroad in the transaction of its business must handle many short freight trains.

But it does not follow from this that those trains are necessarily heavier or contain more paying freight. Another of the alleged disabilities of this traffic is the light loading of the cars. The statistical returns of the railways show for each system the average loading of every loaded car and this is at the present time from 13 to 16 tons. The testimony in this case shows that the average loading of cattle is perhaps 22,000 or 23,000 pounds to the car; that of hogs and sheep is less. It is evident, therefore, that the loading of live stock is materially less than the average carload. To offset this, however, is the fact that the number of empty cars is greater in trains not carrying live stock than in live stock trains, so that the number of loaded cars in dead freight trains is less than in trains carrying live stock.

The statistical reports of the carriers show the average load of paying freight carried by each train upon a given system. We know from the testimony of this case about the average number of cars carried in their live stock trains by the defendants in different parts of the territory involved and from that can determine with reasonable certainty the net weight of live stock trains.

The average stock train of the Chicago, Milwaukee & St. Paul into Chicago consists of more than thirty cars, but to be safely within the fact we may assume that it is just 30, and that the load is ten tons to the car making a paying load of 300 tons to the train. The average load of paying freight for that

system during the year 1903 was 244 tons and during the year 1904, 245 tons. Upon the Santa Fe the average stock train from Texas is 20 to 25 cars while from its Kansas line into Kansas City and from Kansas City to Chicago the trains run from 30 to 40 cars. It may be safely affirmed that the average would be 28 cars, which at ten tons per car would give 280 tons of freight while the average train on that system carried 249.23 tons for the year ending June 30, 1904. Individual cars of other kinds of freight load heavier than live stock, but the average train loading is lighter in case of other freight partly because these stock trains contain fewer empties, but mainly because this traffic lends itself by reason of the length and character of the haul to heavy train loading.

It should be noted that these computations embrace all kinds of live stock and that the loading of cattle would be heavier both by the car and by train load. To offset this, however, is the fact that the weight of these stock trains is estimated after they have been assembled while the average loading for all freight trains covers the entire movement of the carrier.

We find that the average tons of freight in cattle trains or trains carrying carloads of cattle is as great or greater than in the average freight train in case of most of these defendants.

It is said that the movement of live stock is spasmodic and that this produces a congestion of traffic which renders it expensive to handle. It is certainly true that the movement of cattle, to which the testimony in this case mainly refers, is greater from particular sections at some seasons of the year than at others, but it is also true that the movement from one section occurs at a different season of the year from that from another section and that the two tend to balance one another. The movement from the breeding ranges of Texas to the northern pastures begins early in April and continues until the latter part of June, the bulk of the movement being, however, in the spring months. Beef cattle begin to move from the Kansas pastures in July or August and the movement continues into the winter. Grass fed cattle move to the markets from Texas beginning in July; cattle fattened upon cotton seed meal move during the winter months. The movement as a whole upon

any one of the defendant systems of considerable extent is comparatively uniform.

The actual nature of this movement is best seen by taking the receipts by months at the markets. Below is given a table showing the receipts of live stock at Chicago in carloads by months during the year 1904.

January	28,328
February	27,325
March	24,024
April	22,205
May	22,038
June	23,305
July	13,934
August	22,907
September	20,709
October	26,473
November	28,649
December	27,066

Below is another table showing receipts by years from 1894 to 1904 inclusive. These figures are not available in carloads and we have given, therefore, receipts of cattle which fairly illustrate the total receipts.

1894	2,974,363
1895	2,588,558
1896	2,600,476
1897	2,554,924
1898	2,480,897
1899	2,514,446
1900	2,739,046
1901	3,031,396
1902	2,941,559
1903	3,432,486
1904	3,259,185

It will appear from an examination of the above tables that the movement of live stock to market is unusually uniform and that this uniformity is equally apparent whether the comparison be made between months of the same year or different years. It may be doubted whether any commodity delivered in car-

loads in the city of Chicago would show a greater uniformity of movement than live stock.

The foregoing receipts are over all lines of railway. When a particular system is considered by itself the uniformity of movement would naturally be somewhat less. Below is a table showing by cars the movement of live stock to Chicago for the year 1904 over the Atchison, Topeka & Santa Fe Railway.

January	967
February	775
March	538
April	516
May	607
June	830
July	492
August	945
September	913
October	814
November	664
December	590

Conditions on this system are fairly illustrative of those on other lines just as Chicago fairly typifies the markets.

It is further objected that this movement even though it may be regular by the week is congested into certain days of the week and that this offers a serious embarrassment to the handling of the business. Most of the testimony upon this head was addressed to conditions at Chicago. It would appear that while the receipts of live stock at that market are large for the first four days of the week, Monday is the market day which shippers of live stock are most anxious to make and that there is a tendency at the present time to crowd shipments into market upon that day. The Illinois Central Railroad Company was one of those which dwelt most upon the disadvantages arising from this fact. It was said by that company that this disposition to seek the Monday market compelled it to run stock trains from Fort Dodge to Chicago in from five to eight sections on Sunday, while during the remainder of the week but comparatively little stock was transported. The testimony showed that the distance from Fort Dodge to Chicago was 372

miles; that each of these sections would be a solid stock train consisting of from 22 to 28 cars and that the sections would run 20 minutes apart on a schedule of something like 18 miles per hour. The cattle rate from Fort Dodge is 23½ cents per hundred pounds. We may assume that the loading of these live stock cars of all kinds approximates 20,000 pounds to the car and that the trains will average 25 cars to the train. The Illinois Central Railroad would receive, therefore, for the hauling of one section $1,175 and for the six sections $7,050. This would produce if repeated each Monday for the year gross receipts of $366,600 or substantially $1,000 per mile, which is approximately one-seventh of the entire earnings of that company from all sources upon that portion of its line. It is probable that if the Illinois Central Company knew that a train of 25 cars of stock would be ready for transportation on each day of the week from Fort Dodge to Chicago it could handle those trains to better advantage than it could handle the entire movement in 7 sections. But in practical railroad operations no such traffic is offered, and it is idle to assert that when this company can depend with certainty upon being offered for transportation this quantity of freight on the same day of each week it is not a highly desirable species of traffic.

It should be carefully noted that while the movement of live stock may be periodic it is not spasmodic. Its fluctuations are the same from year to year and from day to day. We find that the movement of live stock is remarkably uniform and that this adds much to its desirability as traffic.

It is urged that cattle cars are returned empty. The cattle car, so far as its structure is concerned, can be used advantageously for the transportation of many kinds of freight such as coal, coke, ore, iron articles, and lumber of some sorts. In actual practice such cars are used at times to a considerable extent for this purpose but it appears that when the movement of cattle is active the carriers find it for their advantage to return cattle cars promptly without loading. The empty car movement under any circumstances is large.

The Union Pacific Railway Company kept for a period of eight months its empty and loaded stock car mileage with the

result that the empty stock car movement was 43.8 per cent of the entire movement. Unless something has been overlooked in this voluminous record no other company gave us the exact figures. There is no reason for supposing that the movement upon this line would not be fairly representative of all, although the testimony indicates that it is considerably less upon the Atchison system and perhaps some others. The empty car movement including all kinds of cars upon the Union Pacific was 28.78 per cent for the year ending June 30, 1904. The average upon lines operating in the southwest is about 30 per cent. When it is remembered that the weight of a cattle car is about 32,000 pounds, it will be seen that this fact constitutes a very serious disability; more serious than all the others referred to put together. There is nothing in this case from which it is possible to estimate the extent of this in dollars per car or in cents per hundred pounds.

It should perhaps be noted as a fact that this condition is not peculiar to the cattle traffic. Refrigerator cars which are employed in the movement of dressed meat and packing house products, fresh fruits, vegetables and perishable traffic requiring refrigeration usually come back empty. Cars used in the transportation of lumber of certain kinds are generally returned empty, and in case of coal and coke this is the almost universal rule.

One of the disabilities most urged against the live stock traffic was the hazardous nature of the business. It is evident that this traffic is attended by risks not incident to most other kinds of freight. The mere fact that the thing transported is alive and must be delivered alive at its destination renders the business extremely hazardous. The result of a derailment or a collision must of necessity be much more serious with a stock train than in case of ordinary dead freight. The hazardous nature of this business will appear by noting some of the specifications of negligence on the part of the carrier which can be and have been affirmed. If the train is run at too high a rate of speed the stock are jolted against the side of the car and against one another, thus disfiguring and bruising the animals. If the time is too slow the stock deteriorates in weight and appearance.

A slight delay may result in missing the market for which the carrier must pay if the market falls and for which it receives nothing if the market rises. Very considerable claims have been paid on account of damages to the attendants of live stock received either while accompanying the stock or while returning to the point of shipment. It seems probable in view of the character of the freight that no other sort of traffic which moves in any considerable amount is attended with as great risk as live stock.

Notwithstanding all this we are inclined to think that traffic men are apt to overestimate the effect which this element of risk should have on the rate. It ought not to be a difficult matter to determine approximately the value of this hazard per dollar of gross income from the business or per car of the stock handled. These defendants all know exactly the amount which has been paid for damages to live stock in the last ten years and they all know exactly the number of cars of stock which they have handled in each of those years and the amount of revenue derived from this source. It would, therefore, be an extremely easy matter to furnish the Commission with figures from which it would be possible to reach a satisfactory conclusion on this head. No such figures have been furnished. There is a good deal of testimony which tends to show the percentage by which claims for damage to live stock shipments exceed claims for damage to dead freight shipments, but this is of no value unless we know the percentage which the claims for dead freight shipments bear to the total amount of revenue. Generally speaking that item is entirely insignificant and practically a negligible quantity. We are furnished in case of certain roads in Texas with statements showing the amount of damages paid during certain years compared with the amount of the revenue from this source and the number of cars handled; but as bearing upon this general question these statements are of little value for it is evident that they do not represent normal conditions. Service upon these lines for the last few years has been extremely poor. Out of this has grown up a good deal of friction between shippers and railroads which has resulted in the filing of many claims for damage and the prosecuting of

many suits. In numerous instances these claims have been just ones due not to the hazardous nature of the business as such but to the negligent manner in which the business has been prosecuted. While it is proper that these defendants should adjust their rates with a view to the hazards incident to this business it is not proper that they should advance those rates on account of damages which have accrued from their own neglect and which would not have accrued had this traffic been handled in a reasonably diligent and prudent manner. We are inclined to think that there may be a tendency to the increase of these claims for damages, due largely to the poor service of recent years, but upon those lines where conditions are, so to speak, normal, damages to live stock,while exceeding those to most and perhaps all other kinds of freight in proportion to revenue are not excessive. So far as we recollect but two companies furnished a statement running through a number of years where it can be said that conditions were normal. The Atchison system filed such a statement extending from June 30, 1898, to June 30, 1904, inclusive. The gross sum was $233,704.16. Mr. Biddle testified that the earnings of the Atchison from its live stock business were about 8 per cent of its gross earnings. Assuming this to be so, the total amount of damages paid during these six years would be approximately 1.23 per cent of its revenues from the transportation of live stock. The Northern Pacific Company also furnished a statement covering the same six years from which it appeared that its total payments on this account aggregated for the whole period $61,869.17. The movement of stock on the Northern Pacific is large. The testimony showed that very little had been paid by the Union Pacific in settlement of such claims. We find that the Atchison furnishes a fair standard by which to estimate the legitimate pecuniary value of this hazard.

In addition to pointing out the various disadvantages incident to the movement of live stock which indicate that the rates upon that commodity should be higher than they are the defendants have introduced certain statistical information which they regard as conclusive upon that proposition. We refer to the testimony of Mr. Peabody the statistician of the Atchison

system who from certain statistics kept by him with respect to the movement of live stock and other commodities testified that the present rate upon live stock is not remunerative. Since very great stress is laid by the defendants upon this testimony it is perhaps well to examine somewhat in detail exactly what Mr. Peabody has done.

In a word it is this: He takes each division, which consists of from 100 to 300 miles of line, by itself, determines the total cost of handling freight on that division including fixed charges and taxes, divides this by the total number of gross tons handled over the division and thereby ascertains the cost of handling one gross ton; and since the average number of gross tons contained in a carload of cattle is known with substantial accuracy, Mr. Peabody thus determines the cost of transporting a carload of cattle over each division and so from various points to Kansas City, Chicago, and in one or two instances other destinations, and inquires whether the rate from that point exceeds or falls short of the cost thus arrived at. His conclusion is that on the whole the expense is greater than the income.

It is evident that if his accounts have been properly kept he can determine with absolute accuracy the cost of maintaining structures and way upon a particular division. This entire cost must, however, be distributed upon some arbitrary basis between freight and passenger operations and this Mr. Peabody does in a manner satisfactory to himself. The cost of maintaining equipment cannot be assigned to divisions with the same degree of accuracy and he, therefore, distributes this among different divisions, as we understand, upon a train mileage basis. Certain items in the cost of conducting transportation can be definitely assigned to freight operations within the given limits of a particular division. Certain others cannot and these latter are apportioned by him upon the same basis between different divisions and between freight and passenger. General expenses, taxes and fixed charges are also distributed in the same manner. In this way Mr. Peabody arrives at the total cost of handling freight upon each division over which this cattle traffic passes. It is obvious that if his figures up to this

point are reliable he can accurately determine the average cost of handling a gross ton, that is, a ton including the weight of the car, over each division.

It is well known that this Commission in its early history required that railways should in their statistical returns distribute all operating expenses between freight and passenger. It was objected by the railroads that this could not be done with accuracy; that the results arrived at were erroneous and misleading; and that the system ought not to be continued. In consequence of these representations from the railways the Commission abandoned that requirement about 1893. The first thing that Mr. Peabody has done, therefore, is what was objected to by the railways and rejected by the Commission by reason of its inaccuracy. It seems to us, however, that this might be done and perhaps has been done by Mr. Peabody in a way to be of some value although possessing only the reliability of an estimate.

It may be noticed that previous to 1893 every railroad could have determined with respect to its gross tonnage over its entire system exactly what Mr. Peabody undertakes to determine upon the separate divisions of his system; that is to say, the total cost of freight operations was known and the total tonnage handled and from this the cost of handling one ton on the average could be ascertained. All Mr. Peabody has done in addition is to keep by divisions what was then kept as to the entire system. This, however, is of very great importance. This Commission has frequently observed that in case of a great system like the Santa Fe, operating under the most diverse conditions upon different parts of its system, a general average is of little value in determining what is reasonable upon a single portion of that system.

Assuming that the computation of Mr. Peabody is entirely accurate up to this point there are certain other defects which in our opinion must impair if they do not entirely destroy the value of his conclusions.

His statistics cover the fiscal year ending June 30, 1903. The rates with which he mainly deals are those from Texas to Kansas City and Chicago and this traffic would pass, during a

considerable portion of its transit, over the Gulf, Colorado & Santa Fe Railroad. It has been pointed out in our opinion *In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points* that for the year 1903 the charge upon this railway for maintenance of way and equipment was at least $1,000 per mile above normal. Upon the Atchison, Topeka & Santa Fe proper the item of maintenance of way for that year was 50 per cent above the two preceding years. His results would be materially affected if this item were reduced to the average.

A much more serious objection to the conclusions of Mr. Peabody lies in the fact that he has dealt with the profitableness of this traffic to the Santa Fe system, not with the reasonableness of these rates as a charge to the public. That is to say, he has taken not the rate from the point of origin to destination, but the amount received by the Santa Fe road as its division. This division is almost without exception very much less than the rate from the point at which the traffic is taken by the Santa Fe and usually much less than if the through rate was divided upon a mileage basis. Evidently this is wrong. The question is not whether the division which competitive conditions force upon the Santa Fe from the junction point to the market is a reasonable return to that company, but rather is the total rate from the point of origin to destination reasonable. This could only be determined in the manner adopted by Mr. Peabody when the Santa Fe handled the traffic the entire distance. In other words we must eliminate from the statement of Mr. Peabody all those instances where the traffic does not originate upon its line.

Now if this is done, if we consider all the cases referred to by Mr. Peabody where the Santa Fe operates from the point of origin to the market, it will be found that the rate yields on the average a substantial surplus over the average cost. Counsel for the defendants in his reply brief has made a computation allowing for the excessive charge for maintenance of way and announces that even upon that basis there is a deficit; but if from the table given in his brief there be rejected the traffic which originates upon some line other than the Santa

Fe, then this average deficit of $5.12 per car is converted into an average surplus of $14.32 per car.

The division received by the Santa Fe is properly taken into account as bearing upon the cost of handling this traffic. In determining a fair rate from Fort Worth, for example, to Kansas City, it is important to know what the cost of handling the shipment is and it may safely be assumed that the Santa Fe would not accept as its division a sum less than the cost. In this view these divisions are material evidence as bearing upon the reasonableness of the rate, but they are not standards by which that rate can be estimated as the Commission has often held; and if they cannot be used as standards against the railroad neither can they be used as standards in its favor.

It should also be noticed just what this surplus means. It means that this profit remains after the payment of all operating charges and also after the payment of taxes and interest on the funded debt. This in case of the Gulf, Colorado & Santa Fe is substantially as much per mile as it would cost to reproduce that property. We do not mean that this company is not entitled to a profit on this property over and above these fixed charges but call attention to just what surplus, as Mr. Peabody uses the term, signifies.

It should be finally noted that the cost of movement at which Mr. Peabody arrives is the *average* cost and that this does not furnish a fair test of what the rate on live stock should be unless the cost of moving this species of traffic is equal to the average. All the witnesses for the defendants have assumed that this must be so by reason of the disabilities incident to that traffic which are above referred to, and counsel for the defendants so assumes in his argument. This is by no means clear. It has been found that the live stock traffic involves expenses peculiar to it as loading the stock, bedding, cleaning and disinfecting the car, maintaining stock pens, etc., which according to our finding would, together with the unusual hazard attending this traffic amount to from 1 to 1½ cents per hundred in the rate. It has been seen, upon the other hand, that live stock trains are longer than the average freight train and that while the loading of the individual car is lighter the loading of net

paying freight per train is heavier than the average. It is true that the train is moved at a higher rate of speed, which costs something more perhaps in the way of fuel, but the additional cost of moving freight at high speed comes mainly from the fact that less freight can be moved in a train, and here we find that the average stock train carries as much freight as the average dead freight train. The return movement of the cars is more expensive on the average than in case of other freight, and this is an important addition to the cost of transporting live stock, but in our opinion it is much more than offset by the manner in which this traffic moves. No one thing so contributes to reducing the cost of movement as the ability to handle traffic long distances in solid trains. We find in this live stock traffic a uniform movement in very large volume upon which carriers can absolutely depend, which involves a haul of from 500 to 1200 miles.

It is evident that whether the cost of moving live stock is greater than the average cost of moving freight would depend largely upon the railroad system. If the traffic of a railroad consisted mainly of low class freight like coal and lumber which was moved in train loads considerable distances the cost of moving stock would undoubtedly be above the average; but if the traffic was largely local, with much less than carload business and moved comparatively short distances the cost of moving live stock would be much below the average. We incline to the opinion that upon the Santa Fe system the average cost of moving live stock is not greater than the average cost of moving all commodities, although in the very nature of things there can be no exact basis for that conclusion.

How great is the advantage of being able to move traffic in solid trainloads appears from a consideration of the returns which these defendants receive from the movement of a train of live stock in comparison with the expense of moving it. It has been often said in this and in other cases by traffic officials that it is impossible to determine the cost of moving a particular kind of freight. That is true where the movement is of a mixed character, but it is possible to determine with

reasonable accuracy the cost of transporting a train of this live stock between any two points.

Consider the instance to which we have above referred where the Illinois Central receives $1,000 per mile in gross for the transportation of six trains of live stock from Fort Dodge to Chicago. If all other business, freight and passenger, were wiped out in case of that road and the transportation of this live stock was repeated for each of the seven days of the week its earnings would be approximately what they are today, and yet no one will claim that the cost of operation in that event would be anything like the present cost of operation which is required to earn that sum. The traffic manager of the Union Pacific Railroad testified that in his opinion 30 cents per hundred was too low a rate for the transportation of cattle from Cheyenne to Omaha. Cattle will average to load on this line more than 23,000 pounds to the car, and the testimony shows that they are hauled between these points in trains of more than thirty-five cars on the average with a single engine. This would yield a revenue $2,415 per train for a haul of about 500 miles. Ten trains per day for 312 days would produce a gross revenue of $15,069.60 per mile, and if this were the only traffic moved the cost of operation could not possibly equal one-half this, leaving a net return of six per cent on $125,580 per mile from this source alone.

These illustrations are extreme. They are not referred to as a method by which a reasonable rate should be determined, but to emphasize the importance of being able to haul solid trains over long distances under favorable operating conditions.

While the testimony of Mr. Peabody is interesting and instructive upon the issues involved, we do not think it is by any means conclusive nor that rightly interpreted, it makes for the defendants more strongly than it does for the complainants.

Turning now to an examination of some of the grounds relied upon by the complainant we find that much reliance is placed upon the divisions which some of these defendants voluntarily accept as evidence of the fact that the rates are too high. For example the rate from Fort Worth to Kansas City is 36½ cents per hundred pounds and the Atchison system

would receive upon a minimum of 22,000 pounds $80.30 for transporting a car of live stock from Fort Worth to Kansas City. Midland, Texas, is situated upon the Texas & Pacific 300 miles west of Fort Worth. The rate from Midland to Kansas City is 44 cents per hundred pounds. The Texas & Pacific is the only line reaching this point and it declines to make any through rates, but insists upon its local rate to Fort Worth which is about 21 cents per hundred pounds. Competitive conditions between Fort Worth and Kansas City are such that the Atchison road is obliged to allow the Texas & Pacific 21 cents out of the entire through rate leaving 23 cents for itself from Fort Worth to Kansas City. This upon a minimum of 22,000 pounds allows the Atchison about $50 for that haul. If the shipment moved by way of Pecos the showing would be still less favorable to the Atchison.

Even more striking is the illustration drawn from the rates from Denver, Colorado, to the Missouri River as compared with the division of the line from Denver upon business originating at points west of Denver. The rate from Denver to South Omaha is 33 cents per hundred upon a minimum of 22,000 pounds, $72.60 per car. The rate from Rifle, Colorado, to South Omaha, is $83.00 per car. The line from Denver to South Omaha receives 39 per cent of the through rate, or $32.37; so that the Burlington road for instance would receive $72.60 upon the car which originated at Denver, or some corresponding point, and only $32.37 if the car was received at Denver en route from Rifle.

Now the complainant insists that if the Burlington road can afford to transport this car of live stock from Denver to South Omaha for $32.37, $72.60 is an unreasonable rate, and that if the Santa Fe can afford to haul live stock received from the Texas & Pacific from Fort Worth to Kansas City for $50 per car it ought not to charge $80 upon business originating at Fort Worth. But this does not follow. In determining a reasonable rate the cost of performing the service, as has been just observed, is one element in that rate and the cost of movement is an important item in arriving at the entire cost of the service. The Commission has uniformly held that it was prop-

er to look into the divisions which carriers receive for the purpose of ascertaining the cost of movement since it must be assumed that the railroad would not transport freight ordinarily for less than the cost of the movement, but the division while material testimony for that purpose is not of necessity a standard of comparison by which to estimate a reasonable rate. The division which the Santa Fe is willing to accept in default of not being able to obtain a larger sum fairly shows that the cost of movement from Fort Worth to Kansas City does not exceed $50. The statistics of Mr. Peabody show that it is about $45. This being so it might be good policy for the Santa Fe to accept business at this figure and the fact that it does so accept it ought not to conclude that company against naming a higher rate from the junction point.

The complainant also refers to the fact that formerly when these rates were much lower than they are today and when the expense of handling the business was certainly as great as it is today the Texas lines actively solicited the business and paid large rebates to obtain it. We have already found that such was the fact. The bearing of that fact is much the same as the division which a railway under stress of competition accepts.

Both parties have instituted extensive comparisons between cattle rates and rates on other commodities and also between the cattle rates in question and those prevailing in other sections of the country. The complainant shows upon its side that the revenue per car mile received by the Atchison system and other defendants for transporting grain from Kansas City to Galveston, and lumber from Texas points to Chicago, is less, although as a rule the weight of the car is much heavier than the carload of live stock. Upon the other hand the defendants demonstrate by actual transactions that the revenue per car and per gross ton is greater from the transportation of grain, wool, and many other articles to Chicago than is received for the carriage of live stock.

Very little importance can be attached to many of these comparisons. The rates of this country are so far dependent upon varying and various conditions that it is possible by selecting the proper commodity and the proper locality to show almost

anything in the way of comparison. The comparison with rates on live stock in force in different parts of the country is perhaps of greater value although not great. The defendants show many rates which are higher than the highest of those attacked by the complaint, but we are furnished with no testimony tending to show similarity of conditions and so far as we are informed such similarity does not exist. There is probably some analogy between the movement of cattle from Tennessee to the markets of Louisville and Cincinnati although the movement must be small compared with that to which the rates in controversy apply, but we fail to see any possible comparison between the rate from Nashville, Tennessee, to Cordele, Georgia, or from Laredo, Texas, to San Luis Potosi and those under investigation. The complainant refers to the rate of 28 cents from Chicago to New York, a distance of nearly a thousand miles, out of which is subtracted a delivering lighterage charge of 3 cents per hundred, the low rates to market made upon the Northern Pacific and Great Northern lines and the live stock rates established by the Texas Commission: but it is well understood that the whole level of rates between Chicago and New York is very much lower than between Texas and Chicago or Kansas City. The comparison with rates on the lines in the northwest would seem to be more pertinent, but there for some reason the cost of operation seems to be less than upon the southern lines. The reasonableness of the Texas Commission rates is earnestly denied by the defendants, and it certainly cannot be said that they are voluntary.

What would be more in point, if it were possible to make any accurate statement of the matter, would be the average revenue per ton mile which these rates yield. We have examined with a good deal of care the various tables introduced in this case with a view to arriving at some average of that kind and we think it would be substantially correct to say that rates from Texas, Oklahoma Territory, Indian Territory and southern Kansas, yield for distances of 300 miles, about 14 mills per ton mile; for 600 miles, 12 mills; for 900 miles, 11 mills; for 1100 miles, 10 mills. From Colorado points, western Kansas and western Nebraska rates are approximately ten per cent lower

than those from Texas and southwestern territory, while from stations upon the main line of the Union Pacific and lines to the north they are somewhat lower yet. The per ton mile revenue from the Texas ranges to the northern pastures if computed on the same minimum is less than from southwestern territory to the markets, not as low as in the northwest.

With this may be compared the average rate per ton mile received by these various systems from all freight and this is given with respect to some of the more prominent lines in the table below for the years 1894 and 1904.

	1894 Cents	1904 Cents
Missouri, Kansas & Texas	1.058	1.065
Gulf, Colorado & Santa Fe	1.253	.960
Atchison, Topeka & Santa Fe	.979	,981
Chicago, Rock Island & Pacific	.989	.944
Illinois Central	.839	.607
Chicago, Burlington & Quincy	.919	.858
Chicago, Milwaukee & St. Paul	1.037	.891
Chicago & Northwestern	1.080	.917

It will be seen that the ton mile revenue derived from this cattle traffic is greater in all cases, in some much greater, than the average from all freight transportation of all kinds.

The complainant introduces much evidence tending to show that in recent years the service has been inferior to what it was in former years and relies upon this as a reason why these rates should be reduced.

With the revival of business from 1898 on railroads generally, these defendants in common with others, were overwhelmed with an amount of traffic which they were unable to handle properly. Their equipment was insufficient and their roadbeds were not suitable to the class of equipment which was thought necessary to economical operation. The extensive improvements thereby required, amounting in some cases to a virtual reconstruction of the road, have interfered with the movement

of traffic. The result has been that not only those kinds of traffic which could better stand delay have suffered, but this cattle traffic as well has not been properly handled. For several years previous to 1904 the service was extremely poor; cars were not furnished promptly, and the running time was uncertain and slow. The testimony shows that beginning in some cases with 1903 and in most cases with 1904 that service has been very much improved and it seems probable that in the future it will be as good, other things being equal, as it was formerly.

An average speed of 20 miles per hour is worth more to the shipper of cattle than an average speed of 15 miles an hour. It also costs the railway company more. In determining the reasonableness of this rate we may properly consider and ought to consider what time is made by these defendants under ordinary conditions. We do not think that specific instances of negligence like the failure to furnish cars or neglect in the handling of a specific train even though of very frequent occurrence, could be looked to as affecting the rate. That is a matter for which the shipper has his remedy in court.

Much stress is put by the complainant upon the depressed condition of the cattle industry. Whatever influence this has upon the disposition of the case before us arises from the general fact. While, therefore, several days of testimony were devoted mainly to this aspect of the case it is only necessary to state in the most comprehensive way the facts.

The cost of producing cattle, upon the ranges at least, has materially increased in the last few years. There has been the increased cost of labor and supplies, which has obtained here as well as in railway operations, but the main factor has been the increase in the cost of pasturage. This seems to be true of all ranges but perhaps especially of Texas. It has come to pass within five years that lands which were formerly assumed to be only susceptible of grazing have been taken up for various agricultural purposes, especially for the cultivation of cotton, and these lands have increased two or three fold in value. Land rents have advanced correspondingly. Water rights have been taken up and the obtaining of water is today an ex-

pensive matter. It was said, and we find, that the cost of producing a two-year-old steer upon the ranges in Texas is 25 per cent greater than it was seven years ago.

While the cost of production has increased the selling price has decreased. The testimony upon this branch of the case was taken in April, 1904, and involved a comparison of that date with 1900. The price of beef cattle upon the market during that period showed a decline but nothing like the decrease in the value of range cattle and the poorer grades sold on the market. Texas is devoted largely to the producing of cattle which are matured for market elsewhere. The low price of beef cattle upon the market and the slack demand had tended to decrease the demand for range cattle with the result that there was a surplus and a sharp decline in price. It appeared from actual transactions that range cattle were selling in Texas in the spring of 1904 at from 25 to 40 per cent less than in 1900. The cattle industry seems to be peculiarly subject to periods of prosperity and adversity. The present is one of adversity. Under the most favorable conditions profits in 1904 were extremely small, and many persons remained in the business because they must, with no profit at all. When these rates were advanced in 1903 the cattle industry was unusually depressed, the tendency having been in that direction for two or three years.

Perhaps one-seventh of the value of an average carload of Texas cattle upon the Kansas City market is freight. While, therefore, the item of transportation is not controlling it is important. The advance in freight rates is not alone responsible for the condition of the industry nor would a reduction in rates alone revive that industry. But this is one of several things which has tended to depress it. An advance of ten dollars per car from Texas to the ranges means an increase of from 25 to 30 cents per head to the owner of a two-year-old steer in the northern pastures. This is not a large sum but it is something and the testimony showed that these increases had at least been made an excuse for not purchasing in some instances.

Counsel for the complainant attached much importance to the manner in which these advances had been made, which he

insisted was in violation of the Sherman Anti-Trust Act. This Commission has no direct concern with the administration of that law, but in one view of the case it may be important whether these rates were advanced by agreement between the carriers.

It is manifest that rates from the same points to these various markets must be the same by all lines. It is also evident that there ought to be a just relation in those rates between different markets and from various points of origin even when those markets are not accessible by all lines or when the point of origin is reached by a single line. It is not so necessary from the railroad standpoint that rates between different originating stations should be properly adjusted today as it was formerly since cattle cannot be driven as readily now as in former years, but justice to the producer still requires that noncompetitive stations shall be accorded reasonable rates. It is equally evident that when all these defendants make an advance upon the same day, by the same amount, that action must be the result of some previous understanding. These rates are under the supervision, if that term is correct, of the Southwestern Tariff Committee. What happened in case of these advances and what happens in case of every similar advance was substantially this: A meeting is called by the chairman of this tariff committee at which the proposed advance is listed for discussion. The various roads interested are represented at this meeting and these different representatives express their views upon the matter under consideration. After full discussion has been had some representative "announces" that his line will on a certain date make an advance of a certain amount. Thereupon representatives of other lines announce that they will or will not make the same advance. If all lines announce the advance it is filed and published by the tariff committee. If any one line declines to make the advance the other lines withdraw their announcement and the advance is not made.

The articles of association provide that when a rate is once in effect it shall not be reduced by any line without two weeks' notice to competing lines, although another section in the agreement states that nothing contained in the articles of association

shall interfere with the right of the parties to control their own rates, and that nothing shall be so construed as to violate any provision of law.

Without inquiring whether this violates the Anti-Trust Act of 1890 as interpreted by the Supreme Court of the United States, it is perfectly plain that the practical effect is exactly the same as though all these gentlemen had met, discussed this matter and agreed to put in effect the advances. No one line is bound by the vote of any other line and every line is free, so far as this agreement of association is concerned, to act entirely independent. The testimony in this and other cases shows, however, that in most instances carriers are governed by the opinion of the majority, although this is not universally the case, and instances were given where individual lines had reduced rates against the protest of their competitors. No line could advance a rate without the sanction of its competitors. At the present day when these rates are once advanced they are maintained.

Under these conditions it is perfectly evident that there can be no competition in the rate. No line would reduce the rate as against its competitor because it has nothing to gain by so doing. It agrees not to make a reduction without notice to that competitor and a reduction by one must lead to a corresponding reduction by the other. It also appears in testimony and we find as a fact that there is practically no competition for this business at the present time. The solicitation has largely ceased; rebates are no longer paid; special facilities are no longer given; rates are published and maintained and the shipper is left free apparently to choose whatever route he sees fit. It was said that competition of markets still existed, and as an illustration it was pointed out that rates between New Orleans and the markets in question must bear a definite relation and that certain lines which carried live stock to New Orleans would not consent to an advance to that market for the reason that it would drive cattle shipments from Texas to Mississippi territory. We very much doubt whether a few cents per hundred pounds is sufficient to determine whether cattle shall be raised in Texas or Mississippi; it is sufficient to

determine whether they shall go to St. Louis or New Orleans for slaughter. Rates were advanced to New Orleans at the same time that they were advanced to northern markets. They were not only advanced by the same amount but one prominent line whose rails extend all the way from Texas to New Orleans imposed an additional charge of $15 per car.

The complainant insists that owing to the adoption of various economies in railroad operation and the very great increase in the density of traffic the cost of transportation per ton to these defendants has declined and that for this reason live stock rates should be reduced rather than advanced. The defendants urge that the increase in wages and in the cost of materials has been such as to increase the expense of operation so that all rates ought to be advanced.

With respect to those defendants who handle this traffic from southwestern points as far north as St. Louis and Kansas City these same questions were before the Commission *In the Matter of Class and Commodity Rates from St. Louis to Texas Common Points* (*ante*, p. 238), previously referred to. The testimony in that case was voluminous and exhaustive. We have that testimony and similar testimony with respect to the other defendants in this case. It is unnecessary to restate here the facts or repeat the discussion found in the report of that case, but is sufficient to give merely our conclusions of fact.

We find that wages and the price of most supplies have advanced somewhat over what they were in 1892 and very materially over 1897. We find that improved methods in railway operation together with the increased volume of traffic have more than counterbalanced these factors, so that on the whole the cost of transporting a single ton of freight is certainly less today than in 1892 and probably less than in 1897 while the number of tons transported is much greater, so that the total net result to the railway is more favorable upon the same rate at the present time then ever before. We find that these causes did not justify any general advance nor call for any general reduction of rates in 1903 upon the lines of these defendants and that they do not justify today the continuation of any such advance.

From a consideration of the facts previously stated together with the other facts presented by the record before us it is our duty to find as a further question of fact whether the rates in issue are just and reasonable.

We have the opinion of the traffic officials of these lines that these rates are all decidedly too low even as at present fixed. The mere opinion of a traffic official in support of the rate which he has himself made, or in support of some corresponding rate which has been established upon another line of railway, that the rate is just and reasonable adds very little to the presumption that in his opinion it was reasonable or it would not have been established. The reasons which these gentlemen give for their opinions are entitled to the most careful consideration. If those reasons are susceptible of being duly weighed the fact should be determined by a just consideration of them. It often happens, however, that the nature of the question is such that an expert in giving his opinion can not duly place before the trier the reasons for that opinion. In instances of that kind, if it is impossible to properly weigh and apply the facts, then resort must be had to the opinion itself, although even then to be of much value that opinion should be from some person other than the one on trial.

These traffic officials all base their opinion upon the assumption that the cost of handling this cattle traffic is much greater than the average cost of handling all traffic. The reasons which they give for this assumption do not, as we have seen, bear examination. They all say that the cattle traffic is more expensive because cattle trains are shorter than other trains, but the testimony in this record shows that they are in fact longer. It is said that the loading of a cattle car is less than the average loading of other freight cars and, therefore, that the paying revenue of the train in which they are transported is less; but it appears that while the loading of the individual car is lighter, the revenue freight in the cattle train is as much or more than in the average dead freight train. Other disabilities ar pointed out. Some of these are capable of being expressed i dollars and cents as the cost of maintaining pens and shut the cost of bedding and disinfecting cars, the cost of loadi

the extra hazard peculiar to this species of traffic, etc. These aggregate from 1 to 1½ cents per hundred pounds. In addition are certain minor matters like the use of a longer caboose, the return of the attendants, the stopping to feed and water, which are not susceptible of any estimate upon this record, but of which the aggregate cannot be large. There is the more important fact that this traffic must be given an express service, but we have seen that the greater expense of providing a fast service depends largely upon the fact that the train loading of revenue freight is lighter, whereas here the loading is at least equal to the average. There is a very substantial disadvantage growing out of the fact that a large percentage of cattle cars must be returned empty; but here again the difference is less than one would suppose from a casual consideration of the subject. The empty movement in case of all traffic is necessarily large being some 30 per cent as applied to the entire car mileage of most of the defendants as against 40 or 45 per cent in case of stock cars. This, however, is a substantial disability against this traffic.

If we turn to the rates themselves we find that the average revenue per ton mile which these stock rates yield is greater in all cases and much greater in some cases than the average rate per ton mile. We also find that while the average rate per ton mile in case of all these defendants decreased materially from 1892 to 1903 these stock rates, even before the advances of 1903, had in most cases increased.

Formerly there was the most active competition among the various defendants for this business. This competition as pointed out was from the very nature of the traffic intense and undoubtedly produced a comparatively low rate. At the same time it was normal competition. These rates were not the product of rate wars; they were simply as high rates as could be maintained upon this traffic. That competition has been gradually lessened until today it has practically disappeared. These advances were all made by what was in its practical result an agreement between these carriers and we know of no competitive conditions which would prevent further advances. While this fact may not have an important bearing upon the

reasonableness of the advanced rates it certainly takes away the presumption that the rate in fact is the result of competition, and therefore reasonable.

The depressed condition of this industry has been earnestly pressed upon our attention. We have expressed the opinion elsewhere that freight rates should not of necessity vary with the price of the commodity transported nor with the condition of the business affected. The members of the complainant association cannot require these defendants to make good the depressed state of their industry, but where the rate limits the movement of the traffic, as to some slight extent it does here, that fact is entitled to some consideration, and there is certainly no general prosperity among these shippers in which the defendants are entitled to participate.

The cost of operation has increased in some respects, but this has been more than offset by the introduction of improved methods and especially by the large increase in the volume of the traffic.

We find that the advances made during the year 1903, as shown in the appendix, were unjust and unreasonable and that the rates as advanced were and are unjust and unreasonable by the amount of said advances. This finding includes the advance of March from Texas and kindred points, the advance of September from Colorado and similar points and the advance of March in the range cattle rates. All the advances made during that year were apparently in furtherance of the purpose to generally increase live stock rates and all such advances, as shown in the appendix, are found unreasonable and unjust. It is by no means clear that many of the other advances should not have been held unreasonable, but on the whole we are better satisfied with the above result.

The complainant also attacks in this case the $2.00 charge imposed at Chicago for delivery at the Union Stock Yards. The facts in reference to that matter have been fully stated by the Commission in its previous opinions but to make this report complete in itself they may be briefly summarized here.

Previous to 1865 there were four different points at which live stock was delivered and marketed in the city of Chicago.

Competitive conditions compelled all railroads to make delivery at either one of these points at the option of the shipper, which was found expensive and inconvenient. For the purpose of providing a single point at which live stock intended for that market could be delivered the Union Stock Yards and Transit Company was organized. The railroads were at first the principal owners and stockholders in this company and a majority of the board of directors continued to be made up of railroad representatives until about June 1, 1894, when the management of the Union Stock Yards and Transit Company announced its intention to impose the trackage charge for the delivery of live stock hereafter referred to, and the railroad directors withdrew from the directorate.

According to the original plan the Union Stock Yards and Transit Company was to construct at some accessible point stock yards with facilities for the unloading, delivering and marketing of live stock, was to connect these pens with the tracks of the different railroads and to permit the railroads to have the free use of these tracks for the delivery of stock at the stock yards. This arrangement was carried out and up to June 1, 1894, the different railways bringing stock into Chicago were allowed to haul their cars with their own engines and crews over the tracks of the Stock Yards Company to the unloading shutes. A charge of 25 cents per car was paid the Stock Yards Company for unloading the stock. On June 1, 1894, the Union Stock Yards and Transit Company imposed a trackage charge which was in some cases 80 cents per car and in other cases $1.50 per car for the privilege of doing what had been previously done for nothing. Since June 1, 1894, the railroads have operated in the delivery of this stock in exactly the same way as before, but have been compelled to pay for the privilege as above.

Very soon after the establishment of the Union Stock Yards the other stock yards at which delivery had formerly been made were abandoned and the Union Stock Yards became the universal point of delivery for all stock which was to be marketed in Chicago and for practically all stock brought to Chicago. The Chicago rate entitled the shipper to transportation and delivery

at that point and with the exception of a single company delivery was made there without question and without special instruction. The Burlington system for its own purposes required its agents to ascertain whether the stock was to be marketed at the Union Stock Yards or was to go beyond and to bill accordingly. Most of the railroads had no facilities for the delivery of stock at any other point. It sometimes happened that the shipper of live stock might prefer for special reasons a delivery at some other point and this was made either over the station platforms of the defendants or into pens which to a capacity of two or three carloads were provided by some of them.

Since June 1, 1904, the various defendants making deliveries in Chicago have provided and now have stock pens with two exceptions, but these pens are extremely limited in extent and seem to have been provided simply for the purpose of being able to say that they exist. Live stock is delivered at the Union Stock Yards to exactly the same extent as it was before and must be so delivered while present conditions continue.

On June 1, 1894, the carriers imposed a terminal charge of $2.00 per car upon all live stock delivered at the Union Stock Yards and regularly noted this in their published schedules. We find that while some of the carriers make these deliveries at an expense slightly less than $2.00 per car, including the trackage charge, on the whole this is a reasonable charge provided any charge over and above what is paid the Union Stock Yards and Transit Company for trackage rights should be imposed.

In 1896 the Cattle Raisers' Association of Texas, the complainant in this proceeding, began proceedings attacking the legality of this terminal charge. The Commission in that case ordered the carriers to cease and desist from imposing that charge and suit was brought in the federal court to enforce that order. In 1896, subsequent to the filing of the petition before the Commission, rates on cattle from the most of Texas and from stations in Oklahoma Territory and Indian Territory upon the line of the Missouri, Kansas & Texas, the Chicago, Rock Island & Pacific, and the Atchison system were reduced in most cases 5 cents per hundred pounds. The Commission stated the

fact of the reduction but did not state the territory to which it applied. The Supreme Court of the United States was of the opinion that this reduction must be held to offset the addition of the $2.00 terminal charge and that, therefore, the charge was properly imposed as to shipments from the territory embraced in that reduction.

We find that rates to Chicago from all the territory covered by this proceeding included previous to June 1, 1894, a delivery at the Union Stock Yards and that such rates were sufficiently high to cover that delivery; that the defendants might properly have added on June 1, 1894, the amount of the trackage charge which they were then required to pay for the first time, but that the addition of a terminal charge of $2.00 per car was unjust and unreasonable. We find that rates on live stock from all this territory, except that covered by the reduction of 1896, to Chicago, have since May 31, 1894, continuously been and now are sufficiently high to include a delivery at the Union Stock Yards, and that the imposition of the $2.00 terminal charge has been and now is unjust and unreasonable to the extent that this charge exceeds the amount paid for trackage as above. Within the last two years some reductions in these rates have been made, but these reductions had no reference to the terminal charge at Chicago and were apparently intended to neutralize certain advances which had recently been made in these same rates. The rates are still, owing to the change from carloads to cents per hundred pounds, higher than they were in 1894, and from other territory embraced in this proceeding, except that to which the reduction of 1896 applied, rates were, before the advance of September, 1903, previously referred to in this opinion, higher than they were in 1894 for the most part. We find that those rates previous to the September advance were sufficiently high to include a delivery at the Union Stock Yards, if no trackage charge had been exacted by the Union Stock Yards and Transit Company.

In the territory to which the reduction of 1896 applied these rates were on February 1, 1899, advanced 2½ cents per hundred pounds and on December 15, 1899, 3 cents more per hundred pounds, leaving all rates after the last advance ½ cent

per hundred pounds higher than they had been before the reduction. We find that these rates, after the advance of December 15, 1899, should have reasonably included a delivery at the Union Stock Yards but for the imposition of the trackage charge referred to. We find that if the reductions recommended heretofore in this opinion were made the rates thus put in effect to Chicago should reasonably include a delivery at the Union Stock Yards and that it is unjust and unreasonable to impose a terminal charge which exceeds the trackage charge which these various defendants are required to pay.

We further find that it is under the circumstances and conditions of this case, an undue discrimination against Chicago to impose this terminal charge at that market while no similar charge is made at other markets. Competition might excuse the imposition of a reasonable charge at Chicago although not imposed elsewhere, but not an unreasonable one.

CONCLUSIONS.

It has been found that the advances made during the year 1903, as shown by the appendix, were unjust and unreasonable and that the present rates are unjust and unreasonable by the amount of said advances. The defendants should, therefore, be required to cease and desist from the maintenance of these rates. The defendants should also be required to cease and desist from imposing the present terminal charge of $2.00 per car. We have in the previous case expressed the opinion that this charge might reasonably be $1.00 per car for the reasons stated.

All questions of reparation are reserved.

APPENDIX

The Cattle Raisers' Association of Texas
v.
The Missouri, Kansas & Texas Ry. Co. *et al.*

Advances in Rates on Cattle, in Carloads, from Points in Texas, Indian and Oklahoma Territories, Kansas, Colorado, and New Mexico.

General Advances in Texas.

(1) On February 1, 1899, there was an advance of 2½ cents in the rates on cattle to Kansas City, St. Louis, Chicago and New Orleans from that part of Texas described as follows:

All that portion of Texas lying on and west of a line drawn approximately north and south through the following stations on the lines of railroads indicated: Whaleys, on the Texas & Pacific Ry.; Red Water, on the St. L. S. W. Ry.; Jefferson, on the M., K. & T. Ry.; Marshal and Longview, on the T. & P. Ry.; Lufkin, on the H., E. & W. T. Ry.; and that territory lying on the north of a line drawn thence to and through Palestine, on the I. & G. N. R. R.; and that territory lying on the west of a line drawn thence through Plantersville, on the I. & G. N. R. R.; Hempstead, on the H. & T. C. R. R.; Belleville, on the G., C. & S. F. Ry.; and that territory lying on and north of a line drawn thence through Smithville, on the M., K. & T. Ry.; San Marcos, on the I. & G. N. R. R.; and north and east of a line drawn thence through and including Douro, on the T. & P. Ry.; and all that territory lying east of a line drawn north from Douro to and including Amarillo, Texas, and all stations on the line of the Fort Worth & Denver City Railway north of Amarillo.

In addition to the advances from the above described territory, there were also a few isolated advances from other territory

in Texas lying outside of the territory just described. Said advances are as follows:

On the G., C. & S. F. Ry., Milheim, Texas, advance 2 cents; Sealy, Texas, advance 1½ cents.

M., K. & T. Ry. All stations, Noel to Sealy, Texas, inclusive, advance 1½ cents.

T. & P. Ry. Monahans, Sand Hills and Metz, advance 1½ cents.

(2) On December 15, 1899, there was an advance of 3 cents per 100 pounds in the rates on cattle from all stations in Texas to Kansas City, St. Louis, Chicago and New Orleans, with the following exceptions of stations where the rates were advanced more than 3 cents; said stations are as follows:

Eskota, Colorado, and Big Springs, Texas, 3½ cents; Sweetwater, Roscoe, Loraine, Westbrook, Iatan, Signal Mount, Texas, 3 cents; Pecos to Toyah, Texas, inclusive, advance 5½ cents, (2½ cents March 3, 1899 and 3 cents Dec. 15, 1899). All of these stations are located on the Texas & Pacific Railway. Alpine to Marfa, Texas, on the G. H. & S. A. Ry., advance 5½ cents.

(3) On March 5, 1903, there was a general advance of 3 cents in the rates on cattle from all Texas stations to Kansas City, St. Louis, Chicago and New Orleans, with the following exceptions:

A., T. & S. F. Ry. Rate from El Paso to St. Louis and Chicago reduced ½ cent; G., H. & S. A. Ry., from Alpine to and including Valentine, rate to Kansas City advanced 1 cent; west of Valentine to El Paso, Texas, reduced ½ cent to St. Louis and 4½ cents to Kansas City; I. & G. N. Ry., rate from Laredo advanced ½ cent; S. A. & A. P. Ry., rates from stations Nichols to Skidmore, inclusive, advanced ½ cent to Kansas City, St. Louis and Chicago; all stations south of but not including Skidmore were unchanged. Texas & Pacific Railway rates from stations Allamore to Ysleta reduced ½ cent to St. Louis and 4½ cents to Kansas City; Texas-Mexican Railway, rates from all stations on this line were unchanged.

MISSOURI, KANSAS & TEXAS RAILWAY SYSTEM.

(4) On or about March 19, 1899, the following rates on cattle to Kansas City, Mo., from main line stations on the M., K. & T. Ry. in Indian Territory, were advanced, in cents per hundred pounds, by the amounts indicated below:

Vinita and Adair, 1¾ cents; Prior Creek to Gibson, inclusive, 2¾ cents; Muskogee, 1¾ cents; Summit, 1¼ cents; Oaktaha, ¾ of a cent; Savanna, 1 cent; Kiowa, 2 cents; Limestone Gap to Colbert, inclusive, 2½ cents.

At a later date, viz, on or about December 1, 1899, the following additional advances in rates to Kansas City, Mo., over the rates in effect on March 19, 1899, were made from the stations indicated:

Vinita, 3¼ cents; Adair, 3¾ cents; Prior Creek to Gibson, inclusive, 2¾ cents; Muskogee, Summit and Oaktaha, 3¾ cents; Checotah, 4¾ cents; Eufaula and South Canadian, 5½ cents; McAlester and South McAlester, 3 cents; Savanna, 2 cents; Limestone Gap, 1½ cents; Stringtown, 2½ cents; Atoka to Colbert, 3 cents.

(5) And at a still later date, viz, on or about March, 1903, the following advances in rates to Kansas City, Mo., over the rates in effect in December, 1899, were made from stations indicated:

Leliaetta, 2½ cents; Wagoner, 3 cents; Gibson, 3 cents; Muskogee, 2 cents; Summit, 2½ cents; Oaktaha, 3 cents; Checotah, 3 cents; Savanna, 4 cents; Kiowa, 3½ cents; Caney, 1 cent; Eufaula, 3½ cents; South Canadian, 3½ cents; McAlester and South McAlester, 5 cents; Caddo, 1½ cents; Durant and Cale, 2 cents; Colbert, 3 cents.

The rates to St. Louis from above named points were also advanced, the increase varying from 1½ to 4 cents; and to Chicago, 1 to 4 cents.

ATCHISON, TOPEKA & SANTA FE RAILWAY SYSTEM.

(6) On or about November, 1898, the rates on cattle to Kansas City, Mo., from stations on the main line of the Santa Fe System in Indian and Oklahoma Territories, Newkirk, O. T.,

through Oklahoma City to Thackerville, I. T., inclusive, were advanced as follows:

Perry, O. T., 3 cents; Orlando, O. T., 2 cents; Mulhall, Lawrie, Guthrie and Seward, 2½ cents; Waterloo, 2 cents; Edmond and Britton, 1 cent.

(7) And at a later date, viz, on or about December 1, 1899, the following additional advances in rates to Kansas City, Mo., over the rates in effect in November, 1898, were made from stations indicated below:

Newkirk and Kildare, O. T., ½ cent; Ponca City, 1 cent; White Eagle, 1½ cents; Red Rock, 4 cents; Perry, 4½ cents; Orlando, 5½ cents; Mulhall and Lawrie, 4 cents; Guthrie and Seward, 4½ cents; Waterloo, 4 cents; Edmond and Britton, 3 cents; Oklahoma, Flynn and Moore, 2 cents; Norman, O. T., to Purcell, I. T., inclusive, 2½ cents; Wayne, I. T., 3 cents; Paoli and Paul Valley, I. T., 4 cents; Wynnewood, I. T., 4½ cents; Davis and Dougherty, I. T., 4½ cents; Berwyn and Ardmore, I. T., 5 cents; Marietta and Thackerville, 5½ cents.

(8) And at a still later date, on or about March, 1903, the following additional advances in rates to Kansas City, Mo., over the rates in effect December 1, 1899, were made from stations indicated below:

Newkirk and Kildare, ½ cent; Red Rock, 2½ cents; Perry to Oklahoma City, inclusive, 3 cents, except Asp, 2 cents, and Barnes, 4 cents; Moore, 3½ cents; Norman and Noble, 3 cents; Walker, O. T.; Purcell and Wayne, I. T., 3½ cents; Paoli, Paul Valley and Wynnewood, I. T., 3 cents; Davis, Dougherty and Berwyn, 2½ cents; Ardmore, 3 cents; Marietta, 3½ cents; Thackerville, 3 cents.

At the same time the advance in the rates from the above named points to St. Louis varied from ¼ of a cent to 2½ cents, and to Chicago from ½ cent to 3½ cents.

Oklahoma Territory and Texas Stations, Capron, O. T., to and including Pan Handle, Texas.

(9) On or about December 1, 1899, the rates on cattle to Kansas City, Mo., from stations on the Santa Fe System, Capron, O. T., to Pan Handle, Texas, were advanced the following amounts, over the rates previously in effect:

Eagle Chief, O. T., 1 cent; Waynoka, 1½ cents; Heman, 3½ cents; Tucker, 4½ cents; Curtis, 4 cents; Alston, 4½ cents; Woodward, 4½ cents; Whitehead, Gage, Shattuc and Goodwyn, O. T., 3 cents; Higgins to Pan Handle, Texas, inclusive, 3 cents.

(10) And at a later date, viz, on or about March, 1903, the following advances in rates to Kansas City, Mo., over the rates in effect December 1, 1899, were made from stations indicated, as follows:

Capron, Alva and Noel, 5 cents; Eagle Chief, 4½ cents; Waynoka, 3 cents; Heman, 2 cents; Tucker and Curtis, ½ cent; Alston, 2 cents; Woodward to Goodwin, inclusive, 1½ cents; Higgins, 1 cent; Glazier, Mendota and Miami, 1½ cents; Codman and Pampa, 2 cents; Pan Handle, 3 cents.

Proportionate advances were also made at or about the same time from said stations to South Omaha, St. Joe, St. Louis and Chicago.

Kansas Stations.

(11) On or about December 1, 1899, the following advances in rates to Kansas City, Mo., over the rates in effect August 10, 1897, were made from the stations indicated as follows:

Bellefont, Kansas, 1 cent; Speareville to Mansfield, 2½ cents; Garden City to Coolidge, 3 cents.

(12) At a still later date, on or about September, 1903, the following additional advances in rates to Kansas City, Mo., over the rates in effect December 1, 1899, were made from the stations indicated as follows:

Sears and Howell, Kansas, ½ cent; Wettick to Mansfield, 1 cent; Garden City and Sherlock, ½ cent; Deerfield to Coolidge, 1 cent.

Proportionate advances were made at or about the same dates on the rates to Omaha, St. Joe, St. Louis and Chicago.

Kansas Stations—Rago to Englewood.

(13) On or about September, 1903, the following advances over the rates in effect August 10, 1897, were made from the stations indicated as follows:

Rago and Spivey, 1½ cents; Zenda, 2 cents; Nashville, Isabel and Sawyer, 2½ cents; Coates, 2 cents; Springvale, 1½ cents;

Belvidere, 1/2 cent; Wilmore, 1 cent; Protection, 1/2 cent; Sitka, 1 cent; Ashland, 2 1/2 cents; Acres and Englewood, 3 1/2 cents.

Proportionate advances were also made at or about the same dates in the rates to Omaha, St. Joe, St. Louis and Chicago.

Colorado Stations.

(14) On or about December 1, 1899, the following advances in rates to Kansas City, Mo., over the rates in effect August 10, 1897, were made from the stations indicated as follows:

Holly to Robinson, Colorado, 2 cents; Marshall and La Junta, 1 1/2 cents; Swink, Rocky Ford and Manzanola, 1 cent; Fowler, 1 1/2 cents.

(15) And at a still later date, viz, on or about July 15, 1902, the following additional advances in rates to Kansas City, Mo., over the rates in effect December, 1899, were made from Colorado stations indicated as follows:

Holly to Grote, inclusive, 2 cents; Morse to La Junta, 2 1/2 cents; Swink, 3 cents; Rocky Ford, 2 1/2 cents; Manzanola, 3 cents; Fowler, 2 1/2 cents; Nepesta, 1 cent; Boone, Chico and Baxter, 1/2 cent.

(16) And at a still later date, on or about December, 1903, the following additional advances in rates to Kansas City over the rates in effect July, 1902, were made from the Colorado stations indicated as follows:

Holly, 1/2 cent; Byron to Grote, inclusive, 1 cent; Morse and Lamar, 1/2 cent; Prowers to Caddoa, 1 1/2 cents; Hilton and Las Animas, 2 cents; Robinson to La Junta, inclusive, 2 1/2 cents; Swink, 2 cents; Rocky Ford, 3 1/2 cents; Manzanola and Fowler, 4 cents; Nepesta, 3 1/2 cents; Boone, 3 cents; Chico, 2 1/2 cents; Baxter to Colorado common points, 2 cents.

Proportionate advances were also made at or about the same date in the rates to Omaha, St. Joe, St. Louis and Chicago.

Colorado and New Mexico Stations on main line—Timpas, Colorado, to Silver City, New Mexico.

(17) On or about March, 1899, the rates on cattle to Kansas City, Mo., were advanced the following amounts per hundred pounds over the rates in effect August 10, 1897:

Timpas to Symons, inclusive, 1 cent; Delhi, 1/2 cent; Thatcher to Tyrone, inclusive, 1 cent; Earl, 1/2 cent; Raton to

Blossburg, inclusive, 1½ cents; Maxwell City to Las Vegas, 2½ cents; Chappelle, 3 cents; Ribera to Nutt, inclusive, 2½ cents; Lake Valley, 1½ cents.

(18) At a later date, viz, on or about March, 1903, the following additional advances were made over the rates in effect March, 1899, from the stations indicated:

Raton to Blossburg, inclusive, 2 cents; Maxwell City to Springer, inclusive, 1 cent; Wagon Mound, 2½ cents; Watrous, 4½ cents; Las Vegas, 8½ cents; Chappelle, 6½ cents; Ribera, 6 cents; Sands, 5 cents; Fulton, 4½ cents; Rowe, 3½ cents; Pecos, 2 cents; Glorietta, 1 cent; Canoncita to Lamy, inclusive, 2 cents; Ortiz to Thorton, inclusive, 2½ cents; Elota, 1 cent; Las Cruces, 1½ cents; Mesilla Park, 1½ cents; Anthony, 1½ cents; Mesquite and Earlham, 3 cents; Nutt, 2 cents; Lake Valley to Deming, 3 cents; Silver City, ¾ of a cent.

(19) And at a still later date, viz, September 3, 1903, the following additional advances to Kansas City, Mo., were made over the rates in effect March, 1903:

Timpas, 2½ cents; Symons to Thatcher, inclusive, 2½ cents; Tyrone to Wooten, 2 cents.

Proportionate advances were made at or about the same dates in the rates from these stations to Chicago, Ill.

(20) On or about June, 1903, the rates on cattle to Kansas City, Mo., from stations indicated on Pecos Valley System were advanced the following amounts over the rates in effect in December, 1899:

Canyon City to Portales, inclusive, 3 cents; Roswell, 3½ cents; Carlsbad, 2½ cents; Pecos, 6½ cents.

On March 2, 1905, the Florence to Pecos, inclusive, rates were reduced to 45½ cents.

Chicago, Rock Island & Pacific Railway System.

Main line stations in Oklahoma and Indian Territories.

(21) On or about February 1, 1899, the rates on cattle to Kansas City, Mo., from stations on the main line of the C., R. I. & P. Ry. in Oklahoma and Indian Territories, Renfrow, O. T., to Terrel, I. T., were advanced as follows:

Rush Springs, 1 cent; Marlow, 2 cents; Duncan to Terrel, inclusive, 2½ cents.

(22) And at a later date, viz, on or about December 1, 1899, the following additional advances in rates to Kansas City, Mo., over the rates in effect in February, 1899, were made from the stations:

Pond Creek, O. T., 1½ cents; Kremlin, 2 cents; North Enid, 1½ cents; Enid, 1½ cents; Waukomis, 1½ cents; Hennessy, 1½ cents; Dover, 1½ cents; Kingfisher and Okarche, 2 cents; El Reno and Union City, 2 cents; Minco and Chicasha, 2½ cents; Ninnekah and Rush Springs, 3 cents; Marlow, 2½ cents; Duncan and Comanche, 2 cents; Addington and Sugden, 2½ cents; Ryan and Terrel, 3 cents.

(23) And at a still later date, viz, during the year, 1903, the following additional advances in rates to Kansas City, Mo., over the rates in effect December 1, 1899, were made from stations:

Renfrow, 3 cents; Medford and Jefferson, 4 cents; Pond Creek, 4½ cents; Kremlin, 4 cents; North Enid, 3 cents; Enid, 3½ cents; Waukomis to Minco, inclusive, 3 cents; Chicasha and Ninnekah, 3½ cents; Rush Springs and Marlow, 3 cents; Duncan and Comanche, 2½ cents; Addington, 2 cents; Sugden and Ryan, 3½ cents; Terrel, 3 cents.

Proportionate advances were also made at or about the same date in the rates to Omaha, St. Joe, St. Louis and Chicago.

(24) Kansas and Colorado—main line stations, Stuttgart, Kansas, to Colorado common points.

On or about December 1, 1899, the following advances in rates to Kansas City, Mo., over the rates in effect on August 10, 1897, were made from the stations:

Stuttgart, ½ cent; Prairie View, 1 cent; Almena, Calvert and Norton, 1½ cents; Dellvale, 2 cents; Clayton, 2½ cents; Jennings, 2 cents; Dresden, 1 cent; Selden, 1½ cents; Rexford, 2 cents; Gem and Colby, ½ cent; Levant to Ruleton, inclusive, 1½ cents; Kanarado, Kansas, to Flagler, Colorado, 2 cents; Arriba to Mattison, inclusive ½ cent; Ramah, 3 cents; Calhan, 4 cents; Tip Top and Peyton, 2 cents.

(25) And at a still later date, viz, on or about December 9, 1903, the following additional advances in rates to Kansas City,

Mo., over the rates in effect December 1, 1899, were made from the stations:

Selden, 1½ cents; Rexford, 1 cent; Gem, 1½ cents; Colby, 1½ cents; Levant to Ruleton, inclusive, 2 cents; Kanorado, 1½ cents; Burlington, Colo., 2½ cents; Bethune and Claremont, 3 cents; Vona and Seibert, 4 cents; Flagler, 3½ cents; Arriba and Bocina, 4 cents; Genoa, 4½ cents; Limon to Mattison, inclusive, 7 cents; Ramah, 2½ cents; Calhan, 2½ cents, Tip Top, 2 cents.

(26) On September 5, 1903, stations west of Peyton to and including Colorado common points were advanced 2 cents per 100 pounds.

Proportionate advances were also made at or about the same dates in the rates to Omaha, St. Joe, St. Louis and Chicago.

Main line stations from McPherson, Kansas, to Texhoma, O. T.

(27) On or about December 1, 1899, there was an advance in the rates to Kansas City, Mo., from some of these stations over the rates in effect August 10, 1897, the amount of said advances and the stations from which it applied being as follows:

Haviland and Buckland, 1 cent; Ford City to Plains, inclusive, 2½ cents; Arkalon, 3½ cents; Liberal, 5 cents.

Proportionate advances were also made at or about the same date in the rates to Omaha, St. Joe, St. Louis and Chicago.

New Mexico points—Naravisa to Hereford, New Mexico.

(28) On or about March, 1903, the rates on cattle to Kansas City, Mo., from stations on the main line of the Rock Island System, Naravisa to Hereford, New Mexico, were advanced as follows:

Naravisa, 3 cents; Logan, 5½ cents; Tucumcary, 5 cents; Montoya, 3½ cents; Santa Rosa, and Pastura, 7 cents; Marino, 5½ cents; Torrance to Capitan, inclusive, 4 cents; Oscura, 3½ cents; Tularosa, 4 cents; Alamogordo, 4½ cents; Jarilla Junction, 5 cents; Hereford, 5 cents.

(29) And at a still later date, viz, on or about February, 1905, the following additional advances in rates to Kansas

City over the rates in effect March, 1903, were made from the following stations:

Naravisa, 3½ cents; Logan, 1 cent.

Proportionate advances were also made at or about the same date in the rates to Omaha and St. Joseph.

Rates to Chicago from same New Mexico stations on the Rock Island System.

(30) On or about August, 1902, rates on cattle to Chicago, Ill., from certain stations on the Rock Island System in New Mexico were advanced over the rates previously in effect, as follows:

Tularosa, 1 cent; Alamogordo, 1½ cents; Jarilla Junction, 3 cents; Hereford, 6 cents.

(31) And at a later date, viz, on or about March, 1903, the following additional advances in the rates to Chicago from said New Mexico stations, over the rates in effect in August, 1902, were made from the stations; Naravisa, 4½ cents; Logan, 6¾ cents; Tucumcary, 6½ cents; Montoya, 4¾ cents; Santa Rosa and Pastura, 8¼ cents; Marino, 6¾ cents; Torrance to Capitan, 5¼ cents; Oscura, 4¾ cents; Tularosa, 5¼ cents; Alamogordo, 5¾ cents; Jarilla Junction, 6¼ cents; Hereford, 6¾ cents.

Proportionate advances were also made at or about the same dates in the rates to St. Louis.

UNION PACIFIC RAILROAD SYSTEM.

Main Line stations—Oakley to and including Weskan, Kansas.

(32) On September 5, 1903, the rates on cattle from the stations shown to Chicago, Ill., were advanced the following amounts per hundred pounds over the rates in effect September 15, 1895:

Oakley, Kansas, 2 cents; Monument, 2½ cents; Winona, 2 cents; Wallace to Weskan, inclusive, 2½ cents.

Chemung to Colorado common points:

(33) On September 5, 1903, the following advances were made over the rates in effect August 10, 1897:

Chemung, Colo., 3 cents; Cheyenne Wells, 4 cents; Kit Car-

son to Aroya, inclusive, 3½ cents; Wild Horse, 3 cents; Hugo and Bagdad, 2½ cents; Limon, 3 cents; River Bend, 3½ cents; Deer Trail, 2½ cents; Byers to and including Colorado common points, 2 cents.

(34) On or about December 1, 1899, the following advances were made in the rates on cattle from stations indicated to Kansas City, Mo., over the rates in effect on August 10, 1897:

Oakley, ½ cent; Monument, 1 cent; Winona, 1½ cents; Wallace to Aroya, 2 cents; Sorento, 1½ cents; Hugo to River Bend, inclusive, ½ cent.

(35) And at a later date, viz, on or about March, 1904, the following additional advances in rates to Kansas City, Mo., over the rates in effect December 1, 1899, were made from stations:

Oakley, 1½ cents; Monument, 1 cent; Winona to and including Weskan, 1½ cents, except Lisbon, 2 cents; Chemung, 2½ cents; Cheyenne Wells, 3½ cents; Kit Carson to Hugo, inclusive, 4 cents, except Wild Horse, 3½ cents; Limon to River Bend, inclusive, 7 cents; Deer Trail, 5½ cents; Byers, 6½ cents; Watkins, 4 cents; Magnolia to Colorado common points, 2 cents.

(36) On or about September 5, 1903, the rates on cattle to Chicago, from main line stations on the U. P. R. R. were advanced the following amounts over the rates in effect August 10, 1897:

Julesburg to Ovid, inclusive, ½ cent; Crook, 2 cents; Sterling, 3 cents; Merino, 3½ cents; Snyder to Weldon, inclusive, 2½ cents; Orchard, 2 cents; Sand Spur, 1½ cents; Hardin to Kersey, 1 cent; Colorado common points, 2 cents; Weir, Colo., ½ cent; Lodge Pole, 1 cent; Sidney, 1½ cents; Potter to Archer, inclusive, 1 cent; Cheyenne, 1 cent.

(37) On or about July, 1900, rates on cattle to Omaha, Neb., were advanced over the rates in effect August, 1897, the following amounts from stations: Crook to Sterling, inclusive, 1 cent; Merino, Welton and Orchard, ½ cent; Sand Spur, 2½ cents; Hardin, 3½ cents; Kersey, 2 cents.

(38) And at a later date, viz, on or about September 5, 1903, the following additional advances in rates to Omaha, Neb., over the rates in effect in July, 1900, were made from stations:

Ogallala to Ovid, inclusive, 2 cents; Crook to Merino, inclusive, 3 cents; Snyder, 3½ cents; Fort Morgan and Welton, 4 cents; Orchard, 4½ cents; Sand Spur, 3 cents; Hardin, 4 cents; Kersey, 3 cents; Colorado common points, 2 cents.

(39) On or about September 5, 1903, the following advances in rates to Omaha, Neb., over the rates in effect August 10, 1897, were made from stations:

Weir, Colo., 2 cents; Chappelle to Lodge Pole, inclusive, 3 cents; Sidney to Potter, inclusive, 4 cents; Kimball, 2 cents; Pine Bluffs to Egbert, inclusive, 4 cents, except Tracy, 3½ cents; Hillsdale, 4 cents; Archer, 3 cents; Cheyenne, 2 cents.

(40) At a later date, viz: on or about October 3, 1904, the rates on cattle to Omaha, Neb., from stations Pine Bluffs to Cheyenne, Wyo., were reduced to 29 cents per hundred pounds, which resulted in the following reductions from stations:

Pine Bluffs, 2 cents; Egbert to Cheyenne, 2 cents. (Rate advanced 1 cent March 3, 1904, and reduced 3 cents October 3, 1904.)

St. Louis & San Francisco Railroad System.

Indian Territory Stations.

(41) On or about July, 1902, the following advances in rates on cattle to St. Louis, Mo., over the rates in effect in May or September, 1900, were made from stations:

Wyandotte to Vinita, inclusive, 1¾ cents; Claremore to Mingo, Mo., inclusive, 1¼ cents; Tulsa, 1¾ cents.

(42) And at a later date, viz, on or about March or November, 1903, the following advances to St. Louis, Mo., were made over the rates in effect in July, 1902, from stations:

Wyandotte to Fairland, inclusive, 1 cent; Afton to Chelsea, inclusive, ½ cent; Claremore, Verdigris and Catoosa, 1½ cents; Dawson and Tulsa, 2 cents; Mingo, 2½ cents; Red Fork to Sapulpa, inclusive, 2 cents.

(43) On or about March 3, 1903, the following advances in the rates on cattle to St. Louis, Mo., were made over the rates in effect in January, 1901:

Mounds to Okmulgee, inclusive, 2 cents; Henryetta, 5 cents; Wetumka, 4½ cents; Holdemville, 6 cents; Francis, 4 cents;

Ada, 3½ cents; Lantry to Roff, 3 cents; Mill Creek to Gray, inclusive, 2½ cents.

(44) In January, 1900, the following advances in rates on cattle to St. Louis, Mo., over the rates in effect in December, 1896, were made from stations:

Tuskahoma to Clayton, inclusive, 4½ cents; Elzey and Stanley 4 cents; Dunn Spur and Frazier Spur, 5½ cents; Butler to Wadena, inclusive, 5 cents; Short Spur and Kasoma, 4½ cents; Antlers, 4 cents; Hugo to Grant, inclusive, 3 cents.

(45) And at a later date, namely, March, 1903, the following additional advances over the rates in effect to St. Louis, in January, 1900, were made from stations:

Poteau, 9½ cents; Wister, 6¾ cents; Bengal, 7 cents; Talihina, 7½ cents; Tuskahoma, 4 cents; Clayton, 4½ cents; Kasoma to Antlers, inclusive, 3½ cents; Hugo and Grant, 4 cents.

Proportionate advances were made at or about the same dates in the rates from the same St. L. & S. F. R. R. stations to Chicago and Kansas City.

(46) At a later date, namely, June 10, 1903, the rate on cattle to St. Louis, Mo., from Poteau, I. T., was reduced from 34 cents to 29 cents; the rate from Wister was reduced from 34 cents to 31 cents.

Amarillo, Texas, Group to Northern Ranges.

(47) On May 8, 1896, the rate on stock and range cattle from the Amarillo Group to Douglas, Wyoming, was $62.50 per standard car of 29 feet to 30 feet 6 inches in length. On March 22, 1902, this rate was advanced to $88.75 per standard car of 36 feet. On March 25, 1903, this rate was still further advanced to $95.25 per standard car of 36 feet.

(48) On October 18, 1898, the rate on stock cattle from Amarillo, Texas, to Colorado common points was 26 cents per hundred pounds. On February 1, 1899, this rate was advanced to 28½ cents per hundred pounds. At a still later date, namely, December 1, 1899, this rate was advanced to 31½ cents per hundred pounds, and on March 5, 1903, a still further advance was made to 34½ cents per hundred pounds.

Changes from Dollars and Cents per Car to Cents per 100 Pounds.

(49) Prior to August 10, 1897, the rates on cattle from Colorado points, also from points in Wyoming, Idaho and New Mexico, were in most cases expressed in dollars and cents per standard car; but on or about the date mentioned the rates were changed to read: "In Cents Per 100 Pounds," except in the case of a few points in New Mexico, which had been previously changed. The minimum carload weights varied according to the length of the car. The changes from rates per carload to rates per hundred pounds are discussed in the foregoing report and opinion.

that point, which, in turn, carries in connection with the Philadelphia & Reading to Philadelphia; or the Baltimore & Ohio may carry the lumber through to Philadelphia over its own line. The Norfolk & Western carries from Basic City and delivers to the Cumberland Valley at Hagerstown. The summit of the Blue Ridge mountains is just west of Afton, which is four miles east of Basic City. Traffic for delivery in Philadelphia by the Philadelphia & Reading when shipped from Afton and Gordonsville, or intermediate stations, goes via Basic City or Staunton, and as to such carriage the Afton-Gordonsville group are the longer distance points. About 50 per cent of the shipments go that way. Pine lumber takes the same rate from all stations, Gordonsville to Staunton inclusive, but this is old field pine and of poor quality. The reasons for making the same rate on pine lumber do not necessarily apply to oak lumber. There is competition for lumber between the Chesapeake & Ohio and the Baltimore & Ohio at Staunton and with the Norfolk & Western at Basic City. There is no competition east of Afton until Charlottesville is reached, through which the line of the Southern Railway leads to Washington. The rate from stations, Charlottesville to Gordonsville, inclusive, was reduced November 6, 1900, from 16 to 14 cents to meet the competition of the Southern Railway which operates through Charlottesville and also Orange, a station on both the Chesapeake & Ohio and Southern Roads; but as above stated, the Chesapeake & Ohio on August 1, 1901, raised the rate from Charlottesville and stations east, including Gordonsville, to 16 cents. The rate of the Southern Railway from Charlottesville continues to be 14 cents, and from Orange, a station 9 miles west of Gordonsville, that rate is 13½ cents by both the Chesapeake & Ohio and Southern. All the rates specifically above mentioned apply to oak lumber. It is not clear why the competition of the Southern, which was deemed sufficient to require the 14 cent rate on the Chesapeake & Ohio from Charlottesville and stations north to Gordonsville in 1900 should not have continued to force that rate, since the Southern has kept the 14 cent rate in force from Charlottesville, and the same rate of 13½ cents is charged by both carriers from Orange. All this

oak lumber shipped to Philadelphia from Virginia and West Virginia points, the defendants charge ½ cent more per 100 pounds when delivery is made at Germantown Junction in Philadelphia than they do when the consignments are for other stations in Philadelphia. The defendants, by tariff effective September 8, 1905, have made the rates to all stations in Philadelphia the same; so there remains no controversy over that part of the complaint.

The rates per 100 pounds on oak lumber in carloads to Philadelphia are, from Staunton and Basic City, 14 cents, and from the Afton-Gordonsville group, 16 cents. At the hearing the complainants failed to appear or submit any proof. In cases under the long and short haul clause the burden of proof is on the carrier, and in this case the defendants were required to adduce proofs in support of the averment in their answers that the rate from Afton and other stations, including Gordonsville, higher than the rate from Staunton and Basic City, the longer distance stations, was justified by dissimilarity in circumstances and conditions.

The rates from Staunton and Basic City are claimed by defendants to be forced by the competitive rates of the Baltimore & Ohio from Staunton and of the Norfolk & Western from Basic City. Formerly the rate from those points to Philadelphia was 18 cents, but it was reduced in 1892 to 14 cents, where it still remains. The Basic City rate was 13 cents from February 1, 1897, to November 26, 1899. The rate from Afton, Greenwood, Crozet, Mechums River and Ivy was formerly also 18 cents, but in 1892 this rate was reduced to 14 cents, and so remained until August, 1901, when it was increased to 16 cents, the present charge. In 1890 and 1891 the rate from Charlottesville, Keswick, Cobham and Gordonsville was 18 cents (except 16 cents, April 20 to June 1, 1891). In 1892 it was reduced to 16 cents, and November 6, 1900, to August 1, 1901, it was 14 cents. On the date last mentioned the rate was advanced to 16 cents. The distance between Gordonsville on the east and Staunton on the west is 61 miles. The Baltimore & Ohio carries the traffic from Staunton to Hagerstown and delivers it to the Western Maryland or Cumberland Valley at

that point, which, in turn, carries in connection with the Philadelphia & Reading to Philadelphia; or the Baltimore & Ohio may carry the lumber through to Philadelphia over its own line. The Norfolk & Western carries from Basic City and delivers to the Cumberland Valley at Hagerstown. The summit of the Blue Ridge mountains is just west of Afton, which is four miles east of Basic City. Traffic for delivery in Philadelphia by the Philadelphia & Reading when shipped from Afton and Gordonsville, or intermediate stations, goes via Basic City or Staunton, and as to such carriage the Afton-Gordonsville group are the longer distance points. About 50 per cent of the shipments go that way. Pine lumber takes the same rate from all stations, Gordonsville to Staunton inclusive, but this is old field pine and of poor quality. The reasons for making the same rate on pine lumber do not necessarily apply to oak lumber. There is competition for lumber between the Chesapeake & Ohio and the Baltimore & Ohio at Staunton and with the Norfolk & Western at Basic City. There is no competition east of Afton until Charlottesville is reached, through which the line of the Southern Railway leads to Washington. The rate from stations, Charlottesville to Gordonsville, inclusive, was reduced November 6, 1900, from 16 to 14 cents to meet the competition of the Southern Railway which operates through Charlottesville and also Orange, a station on both the Chesapeake & Ohio and Southern Roads; but as above stated, the Chesapeake & Ohio on August 1, 1901, raised the rate from Charlottesville and stations east, including Gordonsville, to 16 cents. The rate of the Southern Railway from Charlottesville continues to be 14 cents, and from Orange, a station 9 miles west of Gordonsville, that rate is 13½ cents by both the Chesapeake & Ohio and Southern. All the rates specifically above mentioned apply to oak lumber. It is not clear why the competition of the Southern, which was deemed sufficient to require the 14 cent rate on the Chesapeake & Ohio from Charlottesville and stations north to Gordonsville in 1900 should not have continued to force that rate, since the Southern has kept the 14 cent rate in force from Charlottesville, and the same rate of 13½ cents is charged by both carriers from Orange. All this

territory took the 14 cent rate for the period of about 9 years between November 1, 1892, and August 1, 1901.

In the strict sense, the facts as presented do not warrant a finding that the circumstances and conditions at Basic City and Staunton on the one hand, and Afton and stations east of Ivy, or stations east of Charlottesville to and including Gordonsville, on the other, are substantially similar. Charlottesville is a competitive point, but the record does not disclose sufficient facts upon which to base a finding. Moreover, that city is only one of the shorter distance points involved, and it is not understood that a change in the rate at that point alone would materially benefit the complainants.

The complainants were charged on two carloads of oak lumber from Millboro, Va., to Germantown Junction, in Philadelphia, a rate ½ cent above the Philadelphia rate. These carloads were shipped in January, 1904, weight 64,600 pounds, and the ½ cent excessive charge amounts to $3.23.

Conclusions.

There was no evidence offered in regard to the reasonableness of the rates under consideration, and therefore there is no basis for any finding or conclusion on that question.

While we think that the defendants could with much propriety again extend the 14 cent rate over the whole section between Staunton and Gordonsville, the sworn declarations on behalf of the defendants showing effective competition at Basic City and Staunton, and the failure of complainants to offer any testimony, lead to the conclusion that the higher rate from the Afton-Gordonsville group does not constitute an illegal discrimination, as the regulating statute has been interpreted by the courts.

Defendants having put in effect the same rate to all stations in Philadelphia, no further action with reference to the former higher rate to Germantown Junction in Philadelphia is necessary, beyond allowing reparation in the sum of $3.23, which the defendants will undoubtedly refund without entry of formal order. Upon notification from the defendants that the reparation allowed has been made, the complaint will be dismissed.

No. 667.

CITY GAS COMPANY OF NORFOLK
v.
BALTIMORE & OHIO RAILROAD COMPANY.

Decided October 17, 1905.

1. A difference in charge by defendant on coal carried from Pennsylvania mines to Baltimore for local consumption and on coal carried to its Curtis Bay or Locust Point docks in Baltimore, is based upon dissimilar circumstances and conditions, and is not unlawful.

2. Defendant carries coal to Baltimore destined finally to "points outside the Capes" (largely to New England seaboard points) and shipments of the same coal may also be made to Norfolk, an Atlantic seaport. The rate to Baltimore on coal reshipped to "outside the Capes" points is forced by the competition of lines from other mines, and under such rate defendant secures a large annual tonnage via its line to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the Capes be regarded as through shipments, on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the capes; but if this coal is all purely local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. Similar question involved in another pending proceeding and decision reserved upon that branch of this case.

3. Defendant also transports coal from Pennyslvania mines to Baltimore which may be carried from Baltimore by water to Norfolk and to various other points on Chesapeake Bay termed in its tariffs as "points inside the Capes." The rate to Baltimore on coal reshipped by water to "inside the Capes points" is materially less than its rate to Baltimore on coal reshipped by water to Norfolk. Defendant's service and expense to Baltimore is the same whether the coal finally goes to Norfolk or to other points on Chesapeake Bay. By agreement between the carriers of coal from the various mines to Norfolk, Newport News and other Chesapeake Bay points, competition has been suppressed, and while defendant does want to carry traffic to designated "inside the Capes points," it does not desire to participate in

the coal traffic to Norfolk. *Held:* **That this constitutes wrongful prejudice and unjust discrimination, and that while defendant continues to give a rate less than its local to Baltimore on coal destined to "inside the Capes points," it cannot lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk. Complainant granted reparation.**

Wm. H. White for complainant.
Geo. D. Penniman for defendant.

Report and Opinion of the Commission.

Fifer, *Commissioner:*

In this case the Norfolk Chamber of Commerce was granted leave to intervene in support of the complainant, but it subsequently withdrew from the proceeding, expressing at the time its intention to file a new and broader complaint. Apparently the two cases could have properly been considered and disposed of together, and to permit that to be done the disposition of this case has been deferred; but the Norfolk Chamber of Commerce has failed to institute the new proceeding, and decision in this case should not be longer delayed.

This controversy involves unreasonable charges, unjust discrimination and wrongful prejudice alleged to result from different rates on gas coal carried by the defendant from mines in Pennsylvania to Baltimore, according as the coal may be finally forwarded or reconsigned by water to Norfolk, to "points inside the Capes," not including Norfolk, or to "points outside the Capes." There is practically no dispute as to the essential facts, which are as follows:

Findings of Fact.

The Capes referred to are Cape Henry and Cape Charles.

A coal is produced in Pennsylvania, in the Pittsburg-Youghiogheny district, called 3/4 gas coal, which the complainant company prefers to use in the manufacture of gas furnished by it in the city of Norfolk. The complainant began the manufacture of gas from coal about four or five years ago, having previously produced what is called water gas. Expensive machinery was installed by it for the manufacture of coal gas, and com-

plainant then procured coal for such manufacture over the lines of the Chesapeake & Ohio; but in April, 1901, that road advanced its coal rate to Norfolk about 25 cents per ton over the rate on the Norfolk & Western, and some time thereafter complainant commenced purchasing coal from mines along the line of the Baltimore & Ohio Railroad Company.

Subsequently the price of gas coal at the mines on the Baltimore & Ohio was advanced 75 cents per ton, and this, in connection with the railroad rate to Baltimore, rendered the shipment of Baltimore & Ohio gas coal to Norfolk unprofitable to complainant. In consequence of the price at Baltimore & Ohio mines, and the cost of transportation to Norfolk, the complainant has since used a grade of steam coal brought over the Norfolk & Western, which complainant regards as inferior for gas-producing purposes to the gas coal which it formerly obtained from the Pittsburg-Youghiogheny district, on defendant's line.

The consumption of gas coal by complainant has been increasing, and at the time of the hearing it was about 5000 tons annually. In 1902 the complainant shipped 2295 tons of coal over the line of defendant to Baltimore and reshipped the same by vessel to Norfolk. These shipments were as follows: June 4, 413 tons; July 21, 501 tons; October 14, 568 tons; November 28, 813 tons. The rate charged for the transportation by defendant to Baltimore was $1.70, which was then the local rate to that city. At the same time lower rates were in force on this coal to Baltimore for points inside the Capes, and still lower rates to points outside the Capes, neither of which were permitted by defendant to apply to coal reshipped from Baltimore to Norfolk.

The present rates are as follows: $1.80 per gross ton to Baltimore for local delivery. On coal reshipped to points inside the Capes (except Norfolk, Newport News, Hampton Roads and Portsmouth, Va.) an allowance from the $1.80 rate of 30 cents to cover cost of barging and discharging is allowed. On coal reshipped to points outside the Capes the rate of $1.80 is corrected to $1.38 per gross ton.

On coal reshipped to Norfolk, Newport News, Hampton Roads or Portsmouth, Va., no allowance is made, and the local rate to Baltimore applies.

The rates in force from June 1, 1902, were: to Baltimore,

$1.70 per ton; when reconsigned to destinations inside the Capes, an allowance of 20 cents was made, and when reshipped to points outside the Capes, the rate was made $1.28. On June 23, 1902, the allowance for "inside-the-Capes" points was increased to 30 cents. The allowance, formerly 20 cents and afterwards 30 cents, was limited to "coal reshipped to points in Baltimore Harbor or in Chesapeake Bay except Norfolk, Newport News, and Hampton Roads, Va." On April 1, 1903, the rates of $1.70 and $1.28 were increased 10 cents and Portsmouth was also made an excepted point to which the "inside-the-Capes" rate would not apply.

Rates from the New River district in West Virginia on the Chesapeake & Ohio Railway to Newport News and Norfolk are as follows: To Newport News, steam coal, $1.60 per net ton; domestic coal $1.85 per net ton; when for bunker purposes, local, $1.50 per gross ton; when supplied to bunkers of steamships for their consumption when taking cargoes of coal or coke, $1.35 per gross ton; when destined beyond the Capes, $1.35 per gross ton. To Norfolk steam coal, $1.85 per net ton; domestic coal, $2.10 per net ton. Rates over the Norfolk & Western from the Pocahontas coal district are as follows: To Norfolk, steam coal, $1.60 per net ton; domestic coal $1.80 per net ton; for bunker purposes, delivered to steamships owned by the United States and going outside the Virginia Capes, $1.35 per net ton; for bunker delivery, local, $1.50 per net ton.

The difference between the local rate to Baltimore charged on complainant's shipments in 1902 and the rate to Baltimore for coal to inside the Capes was $687.20.

The coal carried by defendant to Baltimore is all shipped locally, and the rates are established individually by the Baltimore & Ohio, without any joint tariff or common arrangement with the water line for through carriage to any ultimate destination. The transportation by water beyond Baltimore is by barge or other vessel chartered or otherwise secured by the shipper or consignee. Coal for local consumption in Baltimore is delivered upon defendant's tracks, sidings or switches; but when the shipper or consignee notifies defendant that the coal is to be reshipped by water to points inside the Capes, it is generally delivered to the vessel at defendant's Locust Point wharf, and when reshipped to points outside the Capes, it is transferred to the vessel

at the Curtis Bay docks. Norfolk coal, when carried, has been delivered to the vessel at both Locust Point and Curtis Bay. The service of defendant, in handling Norfolk coal, is exactly the same as that which it renders on coal delivered for points inside or outside the Capes.

Norfolk is a "point inside the Capes," and is also regarded by carriers and shippers as an Atlantic seaport. Under the terms of the tariff coal may be shipped to the town of Cape Charles or other non-excepted localities in the vicinity of Norfolk at the "inside-the-Capes" rate to Baltimore.

The barging and discharging allowance made by defendant to points inside the Capes, and from which Norfolk, Newport News and Hampton Roads were excepted, was put in effect in August, 1901. The Chesapeake & Ohio and Norfolk & Western then tried to make similar allowances to Chesapeake Bay points, but the defendant reduced its rates sufficiently to keep the traffic. The defendant formerly sought to compete for the coal traffic at Norfolk. This competition resulted in an effort to get traffic away from the defendant at Baltimore and elsewhere.

The following table, put in evidence by the complainant, indicates the cost of transportation for coal to Norfolk from B. & O. mines, and to points outside the Capes and inside the Capes; also the rates on the C. & O. and N. & W. coal to Norfolk. Rates shown in the table have been corrected to show present tariff rates over the Chesapeake & Ohio and Norfolk & Western.

Kind of Coal.	Freight Route.	Freight. Net Ton.	Gross Ton.
¾ Gas	B. & O. (Norfolk)		1.80 plus 47, 2.27
" "	" (Outside the Capes)		1.38 plus 47, 1.85
" "	" (Inside the Capes)		1.80-30 plus 47, 1.97
" "	" C. & O. (Norfolk)	2.10	2.35
R. O. M. Steam	" "	1.85	2.07
Gas	N. & W. "	1.80	2.015
R, O. M. Steam	" "	1.60	1.79

Note: The steam coal is that from the Kanawha region on the C. & O., or the Thacker and Clinch Valley on the N. & W. Being higher in volatile matter than the other steam coals on these roads it is usable for gas purposes, but is of inferior quality to the strictly gas coals.

The cost of transporting coal by water from Baltimore to Norfolk, barging and discharging, ranges from 45 to 50 cents per

ton. Distances from the C. & O. and N. & W. coal fields to Norfolk are approximately the same as the distance from the Pittsburg-Youghiogheny district on the B. & O. to Baltimore. The Pennsylvania System reaches Norfolk via its affiliated line, the New York, Philadelphia & Norfolk Railroad, to Cape Charles, and thence by barge to Norfolk. Baltimore & Ohio coal reconsigned from Baltimore to points inside the Capes is carried to Crisfield, Chestertown, Steelton, Annapolis and other points on Chesapeake Bay; and coal reconsigned to points outside the Capes is taken by water principally to Bangor, Portland, Boston, Salem, Providence, New Haven, and other New England points, and some to Wilmington, N. C., Charleston, S. C., and other South Atlantic ports.

Defendant put in evidence a table showing the volume of coal shipped to Baltimore for track delivery, coal finally destined to points "inside the Capes," and coal finally destined to "points outside the Capes," for each month of the period August, 1900, to June, 1903, inclusive. The figures in that table are summarized as follows:

STATEMENT OF COAL SHIPPED TO BALTIMORE FOR TRACK DELIVERY.

	Cumberland Tons	Meyersdale Tons.	West. Va. Tons	Youghiogheny Tons	Total Tons.
1901	210,223	54,678	89,275	20,819	374,995
1902	211,091	68,978	10,199	2,236	272,106
Increase	868	14,300			
Decrease			79,076	18,583	102,889
1902	211,091	68,978	10,199	2,236	272,106
1903	280,435	112,116	24,287	13,121	429,959
Increase	69,344	43,138	14,088	10,885	157,853

STATEMENT OF COAL DUMPED OVER PIERS AT BALTIMORE FOR POINTS IN BALTIMORE HARBOR AND CHESAPEAKE BAY INSIDE CAPES.

	Cumberland Tons	Meyersdale Tons	West. Va. Tons	Youghiogheny Tons	Total Tons.
1901	165,446	88,611	1,864	454	256,375
1902	186,246	88,639	3,106	2,446	280,437
Increase	20,800	28	1,242	1,992	24,062
1902	186,246	88,639	3,106	2,446	280,437
1903	201,412	94,351	11,204	7,895	314,862
Increase	15,166	5,712	8,098	5,449	34,425

STATEMENT OF COAL DUMPED OVER PIERS AT BALTIMORE FOR POINTS OUTSIDE THE CAPES OR CHESAPEAKE BAY.

	Cumberland Tons	Meyersdale Tons	West. Va. Tons	Youghiogheny Tons	Total Tons.
1901	1,236,922	382,327	441,679	97,508	2,158,436
1902	1,052,697	287,528	395,643	62,807	1,798,675
Decrease	184,225	94,799	46,036	34,701	359,761
1902	1,052,697	287,528	395,643	62,807	1,798,675
1903	946,455	298,652	208,017	41,731	1,494,855
Increase		11,124			
Decrease	106,242		187,626	21,076	303,820

Complainant's shipments to Norfolk in 1902 nearly equaled in tonnage those of Youghiogheny coal to all "inside-the-Capes" points specified as such in defendant's tariffs.

The allowances referred to for the transportation of coal to points beyond Baltimore are established upon the following grounds: Defendant claims that most points within the Capes are not reached by any rail line, or by any competing line, and that it is desirable that the manufacturers located at such points be placed on a parity with consumers in the city who have tracks reaching their establishments, and that their business be fostered because affording a return traffic to defendant.

The rate accorded to coal transportation destined to Atlantic seaports affords some profit over the expense of operation which would be cut off if a higher rate were established. Under the $1.80 rate to Baltimore no coal moves from that point to Norfolk.

In determining the coal rates, the officials of the coal-carrying roads having charge of the traffic meet about the first of April in each year and have a conference as to the conditions existing in New England, which includes competition with coal coming from Nova Scotia and coal going to these points by all-rail routes. They also consider the effect of existing rates upon the traffic generally, and come to an understanding as to what rates shall be established. In respect of Norfolk, Newport News and Baltimore, the rates are so arranged that competition is avoided. For example: the rates of the Chesapeake & Ohio to Norfolk are higher than those of the Norfolk & Western to Norfolk by 25 cents per net ton on steam coal and 20 cents on the gas coal, and the rate of $1.80 by the Baltimore & Ohio to Baltimore, plus

a water charge of 47 cents, makes a total of $2.27 per gross ton to Norfolk, which is 48 cents above the rate of $1.79 per gross ton ($1.60 per net ton) for run of mines on the Norfolk & Western.

The net rate of $1.50 to Baltimore for points inside the Capes would enable complainant to secure a much superior grade of coal for gas-producing purposes laid down in Norfolk for about $1.97 per gross ton, and defendant's traffic and revenue would be materially increased if complainant could avail itself of such lower rate to Baltimore. If the "outside-the-Capes" rate were allowed on coal to Norfolk, the cost to complainant would be further reduced to about $1.85 per gross ton.

The rate for "inside-the-Capes" points (Norfolk excepted) is not forced by competition, but by a desire, it is claimed on the part of defendant, to foster those industries using coal brought by its line. We do not believe the reason assigned is the real one for the discrimination against Norfolk, and even if it was, we do not see that under the particular facts of this case it would be any justification for the discrimination complained of. The rate for Norfolk is made higher by defendant because it does not desire to compete for Norfolk coal traffic, and the rate for "outside-the-Capes" points is made lower by defendant because it does desire to engage in and compete for the coal traffic to New England cities. The whole rate adjustment, including the rates of the Chesapeake & Ohio and Norfolk & Western to Norfolk, indicates a common understanding or agreement between the three roads whereby the complainant is in effect prevented from having large quantities of high-grade coal carried for it over defendant's line; and this notwithstanding the favorable location of complainant at a large seaport having almost unrivaled transportation facilities, both rail and water, and long established as an important competitive center for transportation and trade. Under the testimony in this case, giving Norfolk the "inside-the-Capes" rate, if not indeed the "outside-the-Capes" rate, would be for the interest of the defendant, unless the restriction of competition by the understanding or agreement referred to affords it an equal or greater advantage; and withholding that rate for Norfolk coal is plainly against the interest of the complaining company.

Leaving out of view the competitive rate for "outside-the-

Capes" coal, the distinction in rates made by defendant under the terms of its tariff against Norfolk and in favor of other points on Chesapeake Bay, including even the town of Cape Charles in the vicinity of Norfolk, amounts to unjust discrimination and undue prejudice and disadvantage.

Conclusions.

Under section 2 of the Act to regulate commerce there must be no difference in charge for like service rendered under "substantially similar circumstances and conditions." Defendant's service to Baltimore on coal delivered there for local consumption and on coal reconsigned by vessel from Curtis Bay or Locust Point docks, though the testimony is meager upon that feature of the case, appears to be rendered under substantially dissimilar circumstances and conditions and we hold therefore under the circumstances of this case that a difference in charge on coal carried to Baltimore for local consumption and on coal carried to the Curtis Bay or Locust Point docks is not unlawful.

It further appears that the rate to Baltimore on coal destined to points "outside the Capes" is forced by the competition of lines from other mines, and that under such comparatively low rate the defendant secures a large annual tonnage via its line and the port of Baltimore. If the shipments to Norfolk and to points outside the Capes be regarded as through shipments on what are, in essence, through rates, the competition referred to might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the Capes. On the other hand, if we regard this coal as all purely local to Baltimore there is much doubt whether, as a matter of law, the Baltimore & Ohio can exact, for the haul to Baltimore, more in the one case than in the other. The case of *Wight* v. *United States,* 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. Rep. 822 (applied by this Commission in *Capital City Gas Co.* v. *Central Vermont R. Co. ante,* 104) strongly supports the view that it can not do so. An authoritative determination of this question is very important both to common carriers and the general public; and since this question is more fully presented in the record of another case now pending before us, in which arguments are soon to be made,

we think best to and do reserve for the present our decision on that branch of the case.

It is true that complainant contends that the rate applied on coal reshipped to Norfolk is unreasonable, but no testimony was offered tending to show that the rate to Baltimore is unreasonable *per se*, and we are unable to perceive how the defendant can be prohibited from enforcing its local Baltimore rate on the coal reshipped to Norfolk if it does not at the same time maintain other rates which operate to subject complainant and the city of Norfolk to wrongful disadvantage. The disposition of this case, therefore, must be confined to the question of unlawful prejudice or discrimination resulting from the higher rate on Norfolk coal than on coal reshipped to points inside the Capes.

We think that such discrimination and prejudice have been fully shown in this case. This carrier has established one rate to Baltimore to apply on coal carried by water from that point to points inside the Capes, except Norfolk and some other points in its vicinity. It enforces a higher rate to Baltimore which applies on coal carried by water to Norfolk, a point also inside the Capes, and on coal for that destination defendant renders the same service and bears no higher expense than it does on coal carried to the other points. The only reason suggested by defendant for the higher rate on coal for Norfolk is that it does not want to carry Norfolk coal, and it does want to carry coal for numerous other points inside the Capes.

It also appears that Crisfield and many other points on Chesapeake Bay (inside the Capes) are benefited by a rate to Baltimore lower than the local rate to that city, that some traffic for the Baltimore & Ohio originates at such points, and that competition does not force the lower rate for coal to those localities. It also fairly appears that the defendant, by giving the "inside-the-Capes" rate to Norfolk coal, would derive a large traffic from complainant's business alone, but it fears that by so doing it will engender retaliatory competition by the Norfolk & Western and Chesapeake & Ohio roads.

No other reason than preference of itself is assigned by the defendant. If it can make this distinction in rates it can with equal justice apply the same rates to points both inside and outside the Capes, leaving Norfolk excepted and denied by the high rate the privilege of using its line to Baltimore. Such a

preference, founded upon no difference in cost or other valid traffic reason, is unlawful. *Savannah Bureau of Freight & Transportation* v. *Louisville & N. R. Co.* 8 I. C. C. Rep. 377; *Interstate Commerce Commission* v. *Louisville & N. R. Co.* 118 Fed. 613.

The defendant desires to and does compete for "outside-the-Capes" New England traffic. It does not desire to and does not compete for Norfolk traffic, though Norfolk is highly favored by location and acquired transportation facilities to the extent of being on traffic generally, wherever originating, a competitive point receiving low rates over all lines. The additional feature is presented that these lines, acting harmoniously, have so adjusted their individual coal rates as to give a practical monopoly of the traffic for different points to different lines. It may be that the Act to regulate commerce can not in any proceeding operate to prevent such action, but it is clear to us that it can and does operate to forbid any resulting discrimination from rates fixed by one of those lines; and that is this case.

Our conclusion is that while defendant continues to give a rate less than its local to Baltimore on coal destined to "inside-the-Capes" points, it can not lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk, and that complainant is entitled to recover from defendant, as reparation, the sum of $687.20, the difference between the $1.70 rate to Baltimore applied on its shipments in 1902, and the rates in force on coal to Baltimore reshipped to "inside-the Capes" points in that year. Order will be entered accordingly.

No. 692.

PLANTERS' COMPRESS COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; ERIE RAILROAD COMPANY; BOSTON & MAINE RAILROAD; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; WABASH RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY, and V. T. MALOTT, Receiver thereof; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; SOUTHERN RAILWAY COMPANY; and ILLINOIS CENTRAL RAILROAD COMPANY.

Decided October 19, 1905.

Cotton is transported by defendants and carriers generally at the same rate per hundred pounds, whether shipments are made by the carload or in less quantities. The usual shipment weighs about 25,000 pounds, when the common method of square-bale compression is used, though considerably greater weight may be loaded in the ordinary car. The round-bale process permits the shipment of 45,000 pounds or more per car, and complainant seeks a ruling which would in effect require one rate on cotton as ordinarily loaded and a lower rate based upon a carload minimum of 45,000 pounds or more. The reasonableness of the defendants' rates as applied to all cotton is not questioned, and

the sole object of this proceeding is a carload differential based upon a high carload minimum, which could not be complied with by shippers using the square-bale process without considerable difficulty and greater expense. The cotton grower would benefit by a general reduction of cotton rates, but no advantage would result to either the cotton grower or the middleman from such a differential, and complainant's proposal would not advance the interests of the public. After considering all the conditions and circumstances, including the effect of the proposed differential upon carriers from producing territory as well as the defendants, *Held:*

1. No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.

2. If the rate on an article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per hundred pounds, particularly when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons.

3. While carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum.

4. Defendants' refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the regulating statute.

Felix Rackemann, William Burry and *F. S. Goodwin* for complainant.

Ed Baxter for Illinois Central Railroad Company; Nashville, Chattanooga & St. Louis Railway Company; and Southern Railway Company.

S. O. Bayless for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

Claudian B. Northrop for Southern Railway Company.

A. J. McLaurin and *J. C. Longstreet* for Mississippi Compress Association.

J. B. Daish for National Hay Association.

Sullivan & Cromwell submitted brief for successors of American Cotton Company.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman:*

The general subject of inquiry in this case is the rates on cotton, the complaint arising out of different modes of preparing that article for transportation. While the investigation has taken a wide range and developed many matters of interest relating to the production, handling and carriage of cotton, a considerable part of the testimony seems to have little relevancy to the question to be determined. The nature of that question and the facts which are deemed material will appear from the following statement:

The complainant is a corporation organized under the laws of Maine, succeeding a prior corporation existing under the laws of West Virginia. It is the owner of a patented device for baling cotton and is incidentally engaged to some extent in the business of buying and shipping that commodity. The defendants are common carriers operating lines of railway from East St. Louis and other points to the eastern states and Atlantic seaports, and as such are subject to the Act to regulate commerce. The interveners are a number of corporations, members of the Mississippi Compress Association, carrying on the business of compressing cotton at various points in that state. Upon petition filed for that purpose they were allowed to intervene in opposition to the relief sought by complainant. After the case was heard and submitted, the successors of the American Cotton Company, who appear to have acquired the patents formerly belonging to that company covering round-lap bale compresses, were granted leave to present an argument in support of complainant's contention, and the brief subsequently filed by their counsel has been carefully considered.

Cotton is one of the principal products of the United States, the average crop now exceeding 10,000,000 bales each weighing approximately 500 pounds. The section of country in which it is grown is confined to the South Atlantic and South Central

states which are said to yield about 80 per cent of the world's yearly output. Cotton is perhaps the only great agricultural product no part of which is consumed on the farm or plantation where it is raised. It all moves from the points of origin to the mills where it is manufactured. These mills are located for the most part at long distances from the cotton fields and to a large extent in foreign countries. It appears that more than half of the entire crop is exported. For these and other reasons the conditions under which cotton is transported and the rates charged for carrying it to destination are matters of great importance.

In picking cotton the seed are removed as well as the lint, the former weighing perhaps twice as much as the latter. The first operation is to separate the seed from the lint, and this is done by the process known as ginning. Formerly, and to a great extent at present, a gin plant was erected on every large plantation or in every cotton growing neighborhood within easy access of the producer. The number of such plants appears to be upwards of 29,000. Connected with each gin plant is a relatively cheap and sometimes crude mechanism by which the lint when separated from the seed is reduced in bulk and made into bales about 54 to 58 inches in length 24 to 28 in width and 28 to 36 in thickness, and weighing about 500 pounds. This is known as the flat or plantation bale. The machinery by which it is produced is not expensive, the cost ranging from $1,000 or less to perhaps $2,-500. The testimony indicates that with the development of railroad facilities in the cotton districts and for other reasons which need not be mentioned, the later tendency is to locate these gin plants at the railway stations or in the country villages instead of on the plantations, and to use more improved and expensive machinery, so that a modern outfit of this kind may cost as much as $10,000. It also appears that ginning is now largely done for hire, rather than by the actual cotton grower, the bagging, usually of burlaps, in which the cotton is placed, being sometimes furnished by the planter and sometimes by the proprietor of the gin.

The density of the flat or plantation bale is about 12 ½ pounds to the cubic foot, and 25 such bales, weighing some 12,500

pounds, are about as many as can be readily placed in a standard box car. This form of bale is quite bulky and otherwise unsuited to long distance transportation. It becomes therefore practically necessary to further compress the greater part of the cotton, and for this purpose the plantation bale is taken from the gin where it is made, sometimes by wagon but generally by rail, to some point more or less remote where its bulk is greatly reduced by the use of powerful and expensive machinery and the condensed bale more securely fastened. The plant employed to perform this operation is called a compress, and the process of reducing the size of the plantation bale is the process commonly spoken of as compression. The machinery alone for such a plant costs from $20,000 to $25,000, and the entire compress plant, including the land, building, etc., costs on the average according to the testimony something like $50,000. Some of them cost more than twice that sum, but the figure named is believed to be a fair estimate. There appear to be about 240 of these compress plants located at various points in the cotton growing sections and representing an aggregate investment of not less than $12,000,000.

When the plantation bale is subjected to the great pressure of the compress, it is reduced for the time being to a density of some 60 pounds or more to the cubic foot. While under this heavy pressure bands are placed around the bale for the purpose of holding it, but when the pressure is removed the bale expands so that its density becomes about 23 pounds per cubic foot or perhaps a little less. This forms the ordinary commercial or "square" bale as it is prepared for shipment and sold in the markets. It has the same length and width as the plantation bale and a little more than half the thickness. The usual method of loading these bales is to place them on end in the car, and this appears to be the cheapest and most convenient form of loading. It is also said to be the most convenient and inexpensive form for unloading. In this way fifty bales are easily placed in a standard car, their aggregate weight including the bagging being in the neighborhood of 25,000 pounds. In other words, the compressed bale, though of the same weight as the plantation bale, occupies only half as much space and, therefore, twice as many can be loaded in a given car. The weight of such a load is of course much below the

carrying capacity of the car which may be 60,000 pounds or more.

The testimony shows, however, that a much greater weight of square-bale cotton can be loaded in a standard car. Instances were cited where cars had been loaded with a hundred or more square bales weighing in the aggregate upwards of 50,000 pounds. By placing the square bales on their sides instead of on end and piling them up to about the full space of the car, it seems that loadings approaching carrying capacity can be made, though only at considerably increased expense. Since in the ordinary process of compression the cotton is reduced to a high degree of density for the brief space of time during which the power is applied, it is obvious that if securely tied while in that condition the square bale would have sufficient density to permit full weight loadings. But, as above stated, the methods of tying the cotton while under this extreme pressure as usually practiced are such that when the pressure is removed the bales expand until their density is only about 22½ or 23 pounds to the cubic foot. Various methods have been used to prevent this expansion, at least in part, and so produce a bale of greater density. These methods seem to be practicable, though of varying utility, but they all involve increased expense. Among them is the Gadget process, so called, an attachment by which wires are drawn tightly around the bale and twisted while the cotton is held between the jaws of the compress. By this method a density of perhaps 30 to 35 pounds is retained, and bales of that density and consequently smaller size would apparently permit car loadings of 40,000 pounds and upwards. To what extent the Gadget attachment is in actual use is not disclosed by the testimony.

The greater expense of baling cotton by this and other similar methods is caused in a variety of ways but mainly, as it seems, by the greater time required to perform the operation. Ordinarily it is said that from 50 to 100 bales and even more can be turned out in an hour by the usual process, whereas perhaps not half that number can be prepared when devices of the character here referred to are employed. In short, while it is possible by special pains and effort to put as much as 50,000 pounds of square cotton in a standard car, and while it is practicable to

load to about that weight by the use of certain appliances for increasing the density of the bales, all of which add materially to the cost of compression and loading, the general fact appears to be that square-bale cotton as usually compressed does not conveniently load more than about 25,000 or 26,000 pounds. It should be stated, however, that there is considerable difference in the size and shape of square bales produced in different localities and by different compresses of the same general type. This may be due in a measure to differences in the quality or condition of the cotton but is mainly caused, as we understand, by greater care in some cases in tying the bales while the pressure is applied. Possibly the varying circumstances of the ownership of the compress plants furnish some explanation of the variations in density and form of the compressed bales. In the territory west of the Mississippi river and in the Mississippi valley region the carriers have nothing to do with the compress operations, while in the easterly and southeasterly portions of the cotton belt the carriers are more or less interested in the compress plants and perhaps to a limited extent do their own compressing. Whatever the reason, it seems to be the fact that in the last-named territory the compressed bales are of somewhat greater density and more uniform size, with the result that car loadings of 30,000 pounds and upwards are frequent if not usual.

In this connection it may be noted that the ordinary square-bale compression is designed to comply with the rules of the port shipping associations which call for a density of 22½ pounds per cubic foot. As a large part of the cotton is exported, and as the above stated density meets the requirements of ocean carriage, it was natural that the same density should become the standard for rail transportation. It was equally natural that the mechanism which produced the standard density at the lowest cost should be extensively employed, and this appears to be the ordinary square-bale compress.

The foregoing briefly describes the methods of compression now in general use and applied to probably ninety per cent or more of the cotton, not including the comparatively small portion which moves, mostly for short distances, in the plantation or uncompressed form.

The device or process employed by complainant for compressing cotton is altogether different. This is the invention of one George A. Lowry, and by its use a cylindrical bale is produced which is known as a "round" bale or "Lowry" bale. Without attempting an accurate description of the process, it is sufficient to say that the lint cotton in its fluffy condition as it comes from the gin is fed into a hopper at the top of the machine and there passed through slots which arrange the lint on a revolving column of cotton beneath, this revolving column of cotton being held up against the head-plate with such pressure that the cotton is compressed as it goes down through the slots and remains compressed until the entire bale is formed. The cotton is not squeezed together, as is the case in square-bale compression, and therefore the bale made in this way retains its shape and density without expansion. It has a density of 45 to 47 pounds per cubic foot and weighs about 250 pounds. The diameter of such a bale is about 18 inches, perhaps a trifle more, and its length from 36 to 38 inches. Compared with the power compress it is an inexpensive machine, costing from $3,500 to $4,000. It is designed to be and is in fact installed and used in connection with the gin, in much the same manner as the mechanism used for producing the flat or plantation bale. Its speed is from 8 to 10 bales an hour. By this process or device there is produced at the gin, where the seed is separated from the lint, a bale of high density and complete in every respect for transportation from that point to final destination. Having approximately twice the density of the square bale, it follows that the space occupied is only about half as great and consequently it is entirely feasible to put in a given car twice as many pounds of round-bale cotton as of square-bale cotton, as the latter is commonly loaded. In short, a given quantity of cotton in round bales can be transported in half the number of cars ordinarily used for transporting it in the square-bale form. Indeed, the testimony shows and it appears to be the fact that cars can be loaded with Lowry cotton without difficulty to ten per cent above marked capacity, or to the full limit allowed by the carriers.

The above described round-bale device is covered by letters patent which are owned by complainant and which appear to

have a number of years yet to run. The complainant therefore enjoys, and rightfully, a monopoly of this particular process and can dictate the terms upon which it may be used during the lifetime of the patents. This round-bale machine is sold or leased by complainant at the option of the ginner. On a sale outright the price is understood to be $3,500, and leases are made upon a corresponding basis. It is not suggested in any quarter that these are unreasonable terms, but obviously the complainant will be at liberty until the expiration of the patents to advance the price or vary the terms as may seem to be for its interest. In other words, the public will not have, for some years at least, the benefit of competition in furnishing machinery for baling cotton by the Lowry process.

To some extent the complainant has bought and sold Lowry cotton, but it has confessedly engaged in that business not for the direct profit obtainable therefrom but solely to introduce the round-bale process and promote its adoption. The amount of such cotton handled during the season of 1901-02—the season beginning the first of September—was 238,000 bales; in 1902-03, 473,000 bales; in 1903-04 260,000 bales. The volume of its dealings during the present season is not indicated by the record. It does not distinctly appear whether any considerable quantity of cotton, in addition to that purchased by complainant, is baled by the Lowry method but we infer from the testimony that the amount is comparatively small.

There are a number of other methods of producing a round or cylindrical bale in connection with the operation of ginning. Of these the only one which appears to be much in use is owned or was owned by the American Cotton Company. This device makes a bale by arranging the lint cotton as it comes from the gin in the form of a lap, like a piece of carpet, and then rolling up the lap into a bale under pressure applied by two rollers. The bale thus produced weighs about 250 pounds and has a density of 30 to 33 pounds per cubic foot. Bales of this description readily provide a loading of 40,000 to 45,000 pounds in a standard box car. The American Cotton Company appears to be the principal rival of complainant in exploiting the round bale process, as the latter's president stated that they were in competi-

tion "at all points throughout the south." Neither the cost of compression by the American Cotton Company's method nor the terms upon which its machines may be obtained were disclosed at the hearing, but it is understood to be a patented process controlled by that company or its successors.

There was a good deal of testimony as to the relative cost of baling cotton by the square-bale and Lowry methods respectively, and as to the relative desirability to the producer and the consumer of these different modes of compression. As to the matter of expense the general fact appears to be that the cost of compressing a given quantity of cotton into round bales is materially greater than the cost of putting it into square bales. In other words, having regard to the cost of machinery and operation, the round-bale process is considerably more expensive than the other. As to the comparative utility of the two methods the evidence is quite conflicting. The complainant insists that the round bale is much better suited to transportation, that it requires less weight and cost of bagging, that it practically prevents the introduction of foreign substances into the bale and that it is superior in other respects. The interveners on the other hand claim that cotton may be injured by the round-bale process, either because the great density damages the fiber or because the cotton deteriorates if subjected to such heavy pressure while in the green or oily state in which it is ginned. They also contend that the square-bale method is better suited to the nature of the cotton industry and operates to the advantage of the cotton producer. It is not perceived that the former claim is material. Whether the one process is better or worse than the other as respects the condition of the cotton when it reaches the consumer is a matter of private concern which does not affect the public obligations of the carrier.

These differences of method are radical and involve diverse results in the handling of cotton. Under the square-bale system it becomes necessary to transfer the plantation bale from the gin to some point where a compress plant is located. Mainly because of their great cost and partly perhaps for other reasons, the number of such plants is comparatively small and in consequence the business of compressing cotton by this method is

highly concentrated. On the other hand, the round-bale device produces a finished bale at the place where the ginning operation is performed. As the ginning points are very numerous it is evident that the round-bale system would greatly diffuse the compression industry. By one system the entire volume of cotton would be compressed at perhaps not more than 240 compress points; by the other system it would be scattered through thousands of different localities. Generally speaking, the diffusion of an industry is regarded as a social and economic advantage. In the case of cotton, however, the benefits of diffusion are more or less offset, or seem so to be, by a somewhat exceptional feature. The cotton produced in each neighborhood and indeed on each plantation is of various distinguishable grades or qualities, the number of which appears surprisingly large. The average consumer, however, ordinarily wants only a single grade, or at most a very few grades, depending upon the particular kind of goods which he manufactures. As a practical matter, therefore, it becomes necessary to assemble a large quantity of cotton at some convenient place where it can be classified or separated into grades to meet the varying requirements of the trade. This needful classification of the cotton is now effected, for the most part if not altogether, at the places where the cotton is compressed into square bales, for at each of those places the product of quite a large territory is brought together and the opportunity thereby afforded for dividing it into different grades. In short, the compress point becomes a classification point, and thus the necessary assembling of large masses of cotton for the purposes of grading is provided for by the concentration required for compressing cotton by the square-bale process. The square-bale method, therefore, is less wanting in economy of time and labor than would at first be supposed because it seems to fit in with a peculiarity of the cotton business for which provision needs to be made. It may not be as scientific or suitable as the round-bale process but it appears to accommodate in large measure an important condition of the cotton industry.

To this may be added a further word respecting the relative cost of the two methods, because the direct and indirect expense of preparing the cotton for market falls ultimately upon the pro-

ducer. It is quite true that a Lowry machine costs perhaps not more than one twentieth as much as a modern square-bale compress plant; but on the other hand, since the Lowry process requires a machine in connection with every gin, the number of machines necessary to compress a crop of cotton would be extremely large. For example, the complainant's president testified that in the state of Texas there are only 68 square compresses, whereas it would require 4,000 Lowry machines to compress the present cotton output of that state. Obviously, on any such basis as that, the general substitution of the round-bale process would involve an expenditure several times greater than the present aggregate investment in square compress plants.

The rates applied to the carriage of cotton have been, almost without exception, by the hundred pounds without regard to quantity, and they appear to be everywhere on that basis at the present time. That is, there are no carload and less than carload rates on this commodity. In most if not all cases there is a rate on uncompressed cotton, meaning thereby the flat or plantation bale, and a lower rate on compressed cotton, meaning thereby the ordinary square bale of commerce. It is somewhat inaccurate, however, to describe the rate on compressed cotton as a "lower rate" than is applied to uncompressed cotton. In other words, the difference between such rates does not exactly correspond to the customary relations between carload and less than carload rates. In point of fact the rate is generally made on uncompressed cotton and out of that rate a fixed allowance is made for compression, usually at the carrier's option. The amount thus allowed is different in different districts. In the Mississippi valley, for example, the allowance is invariably 10 cents per hundred pounds without regard to destination; in the more easterly districts it is less, sometimes as low as 6 cents. Moreover, in the latter territory the allowance is not always the same but may be smaller when the cotton is shipped to nearby mills or ports and larger when it is shipped to more remote points of consumption or export. Such varying allowances, however, are unlike the differences between carload and less than carload rates because the larger allowance appears to be accorded not for reasons of economy but from circumstances of competition.

Indeed, the carriers assert, and to a considerable extent at least it seems to be the case, that the allowance for compression had its origin mainly in competitive conditions rather than in the reduced cost of transportation resulting from heavier loadings of the compressed article. In numerous instances at the present time the allowance is not made, except for competitive reasons, where the distances are comparatively short. In other words, there are many cases where the carrier finds it more profitable to transport the uncompressed cotton at the uncompressed rate than to make the customary allowance for compression. In such cases no allowance appears to be made unless for the purpose of meeting competition.

There is an apparent exception to the general statement above made. The rates from East St. Louis to the North Atlantic seaboard, which are the special subject of complaint in this proceeding, are not in terms made on the theory of an allowance for compression. For example, the rate on uncompressed cotton to New York is 42½ cents and the rate on compressed cotton 30 cents. While this difference is greater than the compression allowance in southern territory it is understood to equal the prevailing compression charge at East St. Louis and in the territory west of the Mississippi river. However, any distinction in the form of the tariffs is quite unimportant, because the uncompressed rate appears to be always 12½ cents higher than the compressed rate without regard to destination. It is even more unimportant for the further reason that practically no uncompressed cotton moves from East St. Louis. The 42½-cent rate is therefore virtually a paper rate, since any traffic moving under it is insignificant.

As a reason for not making carload and less than carload rates it is said that commercial conditions render such a distinction unnecessary. In the purchase and sale of cotton the ordinary unit is a hundred bales. There are occasional transactions in fifty bale lots, and perhaps a few in twenty-five bale lots, but the great bulk of the cotton is bought and sold in hundred bale lots or multiples of that number. This being so, it rarely happens that a shipment is offered of less than fifty bales, or an ordinary carload of square cotton, while most shipments involve the use of two or more cars. In other words, the requirements of the

trade and the circumstances under which cotton is handled operate to bring about, as experience shows, the practical equivalent of a carload minimum of about 25,000 or 26,000 pounds. Therefore, as the cotton moves for the most part in carload quantities there is no occasion for a difference between carload and less than carload rates. This claim is supported in a general way by statements produced at the hearing of actual loadings from a representative shipping point. While these statements show considerable variations, they indicate that the ordinary loading approximates fifty square bales and that the application of carload and less than carload rates to compressed cotton, the carload minimum being, say, 25,000 pounds, would result in no material change from present loadings. It follows that a requirement to that effect, if it were desirable to enforce it, could be readily complied with by square-bale shippers.

A further reason for the same rates on any quantity is found in the offerings of uncompressed cotton at the country stations and its movement to the compress points. Not only does the size of the plantation bale limit the loadings to about 25 bales, but the amount of such cotton delivered at many of the country stations from day to day is so small that shipments to the compress would be more or less delayed if materially heavier loadings were required as the condition upon which carload rates could be obtained. As a practical matter, therefore, the application of carload and less than carload rates would have to be limited to the compressed cotton; and this would apparently interfere with the long-established practice of making through rates from the point where the cotton originates. In short, a carload rule would widely disturb existing conditions and involve a general readjustment of cotton rates.

For the most part if not altogether the rates on cotton apply from points of origin regardless of the place of compression. The rate actually paid is the through rate from the point where the cotton is ginned or the plantation bale first loaded, though it may move to the compress point on a local rate. In such case, however, the amount paid for taking the cotton to the compress is credited on the through rate from origin to destination when the cotton is shipped out from the compress point.

The steamships carrying export cotton accord lower rates on the round-bale article. This is because its greater density permits a greater weight to be loaded in the same space, and perhaps to some extent because it is easier to handle. In the nature of the case vessel rates are based largely upon space occupied, because the capacity of a vessel is fixed and limited, whereas the capacity of a railroad is practically indefinite to the extent of available equipment. From the Gulf ports the foreign rate on round-bale cotton appears to be about two-thirds the rate on square-bale cotton. For example, if the rate on square cotton is 36 cents from Galveston to a foreign destination, the round-bale rate to the same place would be 24 cents. It appears, however, that coastwise steamers from Gulf ports and South Atlantic ports to North Atlantic ports make no difference in rates between round-bale and square-bale cotton. From North Atlantic ports to foreign destinations the ocean rate on round bales is about three-fourths the square-bale rate. That is to say, when the rate from Boston is 12 cents on square cotton, the rate on round cotton would be 9 cents. It also appears that round-bale cotton gets a somewhat more favorable rate of insurance.

During a period of about two years beginning with the cotton season of 1900, as we understand, it appears that complainant was allowed a lower rate on shipments of round-bale cotton from East St. Louis to the North Atlantic seaboard, both on cotton for export and that for domestic consumption in the New England mills. No tariff establishing such lower rates was published or filed. The rate actually paid by complainant was 10 cents less than the published tariff, on both domestic and export cotton, and this lower rate seems to have been accepted by all the roads leading from East St. Louis to New York and New England points, except the Pennsylvania system which refused to make any concession. There was rather sharp dispute as to whether the tariff rate was charged in the first instance and the 10 cents afterwards refunded, or whether the shipper simply paid the lower rate. The testimony indicates that the greater portion of the cotton carried at the reduced rate was exported, and in such cases the complainant appears to have paid only 20 cents as the inland portion of a through rate to the foreign des-

tination. On domestic shipments to New England points it would seem that the tariff rate was paid, at least in some instances, and 10 cents per hundred thereafter refunded. This was manifestly unlawful and known to be so by both parties to the transaction. The complainant was perfectly aware that no tariff authorized the rate which it received, and the carriers in granting the concession acted in plain violation of law. The refunding of a part of the tariff rate, when that occurred, was not the honest return of an overcharge but simply and purely the payment of a rebate. In this proceeding, however, neither the form of the transaction nor its illegal character need to be considered, but the fact that round-bale cotton was carried for about two years from East St. Louis to the North Atlantic seaboard on a 20-cent basis may properly be taken into account. To what extent concessions were made during the same period on square-bale cotton does not appear, but enough was stated by a witness for complainant to show that less than tariff rates were paid during the same period on more or less of the square-bale shipments. The rebates on square-bale cotton were probably not as great nor as generally allowed as on complainant's shipments; but the difference in actual rates, in many cases if not generally, was materially less than the difference between 20 cents and the rate named in the tariff.

After this lower rate had been allowed for about two years, as above stated, the carriers refused to continue the concession and declared their intention to exact the full tariff rate. Thereupon a suit was brought by this complainant against the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, one of the defendants herein, to enjoin the charging of a higher rate than had been accorded during the period mentioned, and in that suit a temporary injunction was granted. A motion to vacate this injunction was denied and the injunction continued pending the trial of the cause, on condition that complainant give a bond to pay the increased charges if it failed in the suit. Such bond was given but the testimony shows that the complainant has not since tendered any shipments of cotton to that company. The case has not been tried on the merits.

The foregoing appear to be the principal facts relating to the

question to be determined, but some further facts will be stated and inferences drawn as we proceed to examine the complainant's demand and the grounds upon which it is urged. Briefly stated, the defendants are charged with imposing unreasonable rates on round-bale cotton which readily loads 45,000 pounds or more, because they have for years and do now carry at the same rate square-bale cotton which ordinarily loads only about half as much. It is conceded that round-bale cotton as such is not entitled to more favorable rates and therefore the demand in form is that any cotton in carloads of 45,000 pounds and upwards shall be accorded lower rates than are or may be applied when cars are less heavily loaded. This demand is based mainly on the reduced cost and consequently greater profit to the carrier resulting from heavier loadings. Other facts relied upon to support the contention are the lower rates at which complainant's cotton was carried by certain of the defendants during the period above mentioned, the differential allowed on ocean shipments of round-bale cotton to foreign destinations and the greater expense of compressing cotton by the round-bale process. The complainant's case has been presented with great ability and is entitled to serious consideration.

It will be observed that the defendants, with two exceptions, are carriers having lines between East St. Louis and the North Atlantic seaboard, and it is against those carriers that the complaint is specifically directed. No cotton originates on any of those lines nor are they concerned in the methods by which it is collected and handled at the points of origin. They receive the cotton in carload quantities for the most part and transport it to the East for domestic consumption and for export. If the question raised could properly be confined to the defendants in this proceeding the complainant's argument would be more plausible. We are of the opinion, however, that the case should be more broadly considered and that we should take into account the effect of the ruling sought upon other lines and routes and the general conditions of the cotton industry.

As already stated, the rates on cotton are uniformly made and have been for a long time by the hundred pounds without regard to quantity, that is, without any difference between carload and

less than carload shipments. Now, it seems evident that complainant's demand could not be complied with, as a practical matter, without departing from this long standing custom and establishing some minimum quantity or weight of car loading which should receive a lower rate. The propriety of such a change and its probable effect are involved in the question to be decided. The carriers apply rates on cotton in any quantity, whether square bales or round bales, making the same rates and the same allowances for compression in one case as in the other, and they refuse to allow lower rates based upon car loadings. Is such refusal a violation of law?

It would seem that a lower car-load rate is in the nature of a premium for heavy loading. Certain rates are established which apply on smaller shipments and lower rates accorded when a given quantity or weight of an article is placed in a single car. In effect the car-load rate is granted upon a condition in respect of loading. The minimum amount which thus secures the lower carload rate is usually not more than half and frequently less than half the weight-carrying capacity of the car provided. For bulky articles the minimum is often determined by the space capacity of the car, but so far as weight is concerned the minimum is ordinarily very much below carrying capacity. To this general rule there appear to be a few exceptions, the most notable perhaps being grain and grain products which sometimes though not generally have a minimum of car capacity or nearly that amount. In such cases, however, where the usual minimum is greatly increased, it does not follow that there is a corresponding reduction of the rate *on that account.* The usual carload rate is not applied to the usual minimum and then a lower rate provided for loadings to the increased minimum, but rather the carload rate is applied only to the increased minimum loading. In other words, the exceptions to the general rule may be regarded as instances of more favorable carload rates but on less favorable conditions than are ordinarily imposed. Moreover, in the case of grain and grain products, when car capacity or other exceptionally high minimum is fixed for carload rates, the condition imposed can be complied with by all shippers, or at least by one shipper as well as another. In

this respect there is a marked and material difference between cotton and the articles named.

If there ought to be carload and less than carload rates on compressed cotton, it is not easy to see why the carload minimum should be so much higher in proportion to carrying capacity than is usually fixed as the basis of carload rates. What peculiarity has this article, or under what special circumstances is it transported, that an exceptionally high minimum should be the required condition of carload rates? Why should most articles be carried at carload rates with loadings of not more than half of car capacity and cotton be denied carload rates except in loadings that approximate capacity? What legitimate distinction is there in this regard between cotton and other commodities?

These questions naturally arise and they invite attention to the status of complainant and the purpose which it evidently has in view. The complainant is neither a cotton grower nor a cotton spinner. The object of its incorporation is to sell or lease a patented device for baling cotton. Incidentally it is engaged to some extent in the purchase and sale of round-bale cotton, not as an independent and regular business but solely to aid the introduction and use of its machine. Its real object is to supersede the other and customary modes of compressing cotton by a mechanical contrivance which it controls. This is entirely proper and even commendable, but the fact is not without importance that the complainant as the owner of a special process for baling cotton has no interest in that article either as producer or consumer. The rates at which cotton is carried are of no more concern to complainant than they are to any other dealer in cotton machinery. Undoubtedly a lower charge for transporting cotton would enure to the public benefit, but that is a matter of comparative indifference to the complainant. Its interests would not be promoted by a general reduction or injured by a general advance in cotton rates. Every purpose of complainant would be as fully accomplished by continuing the present rates for carloads of 45,000 pounds and upwards and increasing the rates for smaller shipments as by continuing the present rates on small loadings and reducing the rates on car-

loads of the proposed minimum. The only thing really wanted is a readjustment of cotton rates so that instead of a rate per 100 pounds without regard to quantity there shall be one rate on cotton as ordinarily loaded and a lower rate when 45,000 pounds or more are placed in a car.

That this and nothing else is sought by complainant has been virtually conceded throughout the inquiry and abundantly appears from the record. Early in the first hearing a question was asked by a member of the Commission and answered by complainant's counsel as follows:

"Question: You have put in issue the rates from East St. Louis to New York. The rate is now 30 cents. The rate has been 20 cents. Suppose the rate on compressed cotton generally were reduced to 20 cents; would that satisfy your complaint?

"Answer: No, your honor, we cannot live under that condition, because our compression costs more."

Again, at a later hearing, when the defendants offered to show that the present cotton rates are reasonably low, another Commissioner remarked: "I do not understand this to be a complaint as to the rates, except as to the relation or justness." During the colloquy which followed, complainant's counsel among other things said:

"In other words, I will agree that if the Illinois Central Railroad Company consents to such an order as we ask that they may add 50 per cent to their rate on the plantation bale and I will never murmur. It is the differential that I am concerned about."

Thus it plainly appears that the sole object of this proceeding is a carload differential based upon an extremely high carload minimum. And complainant demands this not in the interest of cotton shippers generally but manifestly for the purpose of having lower carload rates on a condition which cotton baled by its process can easily meet but which other shippers cannot comply with, at least not without materially greater trouble and expense than they now incur. Merely requiring carload and less than earload rates with about the usual carload minimum as related to car capacity, say 25,000 pounds or even 30,000 pounds, would not be of the least benefit to com-

plainant because all other shippers could load to such a minimum and thereby obtain the same carload rates. It is not asked or desired that carload rates shall be provided which all shippers or most shippers can secure without added expense, but carload rates based upon such a high minimum as will inure to complainant's advantage as the exclusive vendor of a particular process of baling cotton. In short, the confessed aim of complainant is to have carload rates—whether higher or lower than present rates is unimportant—dependent upon an unusual and difficult condition. It evidently believes, and that is apparently the fact, that such a condition could not be complied with by most cotton shippers without materially increasing their present expenses for compression and loading. Such increased expense on their part would be an advantage to complainant simply and solely because it would increase the desirability of complainant's device and promote its adoption. We can understand that the cotton grower would be benefited by a general reduction of cotton rates, but we do not perceive that the grower, or the middleman as such, would be benefited by a differential. It seems to us, therefore, that the proposed change is sought not in the interest of the cotton producer or the cotton dealer but for the purpose of increasing the advantage of complainant's method of preparing the article for transportation. In our judgment the defendants are under no legal obligation to afford an advantage of that sort. No provision of the regulating statute requires the carrier to provide lower rates upon a condition which most shippers are not prepared to meet, and which they could meet if at all only by a considerably increased outlay; and we do not feel called upon to make a ruling which admittedly leads to that result.

Something akin to this in principle was decided by the Commission during the first year of its existence. This was a case where the carrier allowed a discount from its coal rates to consignees receiving not less than 30,000 tons a year. This was held to be unlawful on the ground that it was a condition which most shippers could not meet, and Judge Cooley in that case, speaking of the carriers' offer of a lower rate on 30,000 tons yearly shipments, said that "a discrimination which should

so limit the offer that a part of those who could and might desire to accept it would be excluded from its benefits, would for that very reason be unjust and indefensible." *Providence Coal Co.* v *Providence & W. R. Co.* 1 I C. C. Rep. 107, 1 Inters. Com. Rep. 363.

It is upon the same theory that a lower rate for a train load than for a carload is regarded unlawful; because it is in effect allowing lower rates upon a condition which only a few shippers can comply with and consequently is an injustice to those unable to ship the required quantity.

There is another difficulty which may be referred to in this connection. Where rates are based upon the hundred pounds regardless of quantity, there is of course no particular inducement to the shipper to make heavy car loadings, and actual loadings will practically be determined by commercial conditions and the requirements of the trade. As would naturally be expected, the testimony shows that the great bulk of cotton is compressed only to the density necessary to secure the compression allowance, and this degree of compression is effected in the cheapest manner. The result is that most of the cotton is prepared for shipment in such manner and form as to load conveniently about 25,000 or 26,000 pounds. Some part of it, however, by the exercise of a little more care in tying the bales and loading the cars, exceeds the minimum density and loads 30,000 pounds and upwards. By the use of the Gadget attachment and similar devices a bale of still greater density is produced which loads readily 35,000 to 40,000 pounds. The American Cotton Company's bale has a density of about 33 pounds and conveniently loads 40,000 to 45,000 pounds. The complainant's cotton with a density of 45 pounds and upwards permits loadings of 60,000 pounds or full car capacity. Even the ordinary square bales can by unusual effort and at considerable expense be loaded up to about 50,000 pounds. So we have cotton compressed into bales of different sizes and various degrees of density, with feasible loadings ranging from 25,000 pounds to 60,000 pounds and more in the standard car. At present all these different kinds of bales are carried at the same rate per 100 pounds without regard to the

amount or weight loaded in a car. Now, if this system is to be set aside and what amounts to carload and less than carload rates established, why should the minimum be placed at 45,000 pounds? Logically, the complainant might ask for a minimum of 60,000 pounds. If the cost principle invoked is to govern, if rates are to be based upon the weight of cotton placed in a car, how can the regulation be consistently limited to the one minimum proposed? If there is to be a carload minimum, why should it be fixed at a figure which would promote the interests of the two principal round-bale methods and place all square-bale methods at more or less disadvantage? Yet that is precisely what the complainant seeks to accomplish and that would be the expected result of the ruling it asks for, as its counsel frankly admit. We do not believe that the law requires such an adjustment. On the contrary it appears to us, taking the whole situation and all interests into account, that the present system of cotton rates on any quantity is better suited to the peculiarities of the cotton industry, and that the rule contended for by complainant would tend to confusion and probable injustice.

The circumstance that foreign steamship lines grant a differential to round-bale cotton does not seem to be important. For obvious reasons the space occupied by a given article as compared with its weight is of much greater consequence to the ocean carrier than to the rail carrier, and it does not follow that the latter is bound to grant a difference in rates which the former sees fit to allow.

The fact that complainant for a couple of years secured lower rates from certain carriers undoubtedly aids the complainant, though its force is much impaired, in our judgment, by the circumstances under which the concession was made. This view is not alone based upon the unlawful character of the transaction but quite as much upon the related fact that unauthorized rates were more or less granted at the same time to square-bale shipments. Giving due weight to all the testimony bearing upon this point we are far from believing that it is sufficient of itself to sustain the complainant's demand.

The complainant's case rests really upon the contention that

the reduced cost of hauling effected by heavy car loadings of round-bale cotton imposes upon the carrier the obligation to recognize this saving of expense by a corresponding reduction of charges. It is assumed, or at least not denied, that the 30-cent basis from East St. Louis is reasonable as applied to the ordinary loading of cotton but that basis is claimed to be unreasonable when the loadings are greatly increased. Whatever may be the merits of this claim as an abstract proposition, we cannot admit its application to the facts of this case. To adjust rates on different articles on the basis of comparative cost to the carrier would involve a wide departure from accepted theories of rate-making; to adjust rates on the same article with reference to cost of carriage under different conditions would be still more radical. If the rate on a given article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate in our opinion does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 pounds. Particularly is this so, as we think, when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. No classification can be so minute as to conform to the differing varieties and conditions of traffic. To separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification, as was held by the Commission in *Derr Mfg. Co.* v. *Pennsylvania R. Co.* 9 I. C. C. Rep. 646. Where numerous articles are carried at the same rate it necessarily happens that the profit to the carrier is greater in one case than in another. Even the same article in the same form and at the same rate will result in varying profits because of the differing circumstances of transportation. In short, as it seems to us, the principle contended for is subject to many exceptions and admits of practical application only to a limited extent. Besides, the adjustment of rates on

the basis of cost to the carrier leaves out of view in large measure the value of the service to the shipper, which has always been regarded as a prominent factor in classification and entitled to due recognition in the rates applied to different articles and to different grades and conditions of the same article. There is no difference in quality between round-bale and square-bale cotton. Both sell at the same price in the markets of the world, and the value of the service to the shipper for transporting a given quantity is the same whether carried in one form or the other.

As we understand the facts, this identical question was presented to the Railroad Commission of Texas, and by the same interests as are here complaining. That commission twice refused to order lower rates on round-bale cotton or on account of any condition in respect of loading. Thereupon a suit was brought under the Texas statute to compel the commission to fix lower rates on substantially the same grounds as are urged in this proceeding. The plaintiffs in that suit (corresponding to the complainant here) succeeded in the lower courts, but the ruling was reversed on appeal by the Supreme Court of Texas for reasons set forth in an extended opinion. *Railroad Commission of Texas* v. *Weld,* 96 Tex. 394, 73 S. W. 529.

Without endorsing all that is said in that opinion we quote the following observations which appear to us pertinent and in the main correct:

"The same rate is charged per hundred weight for all cotton, and the plaintiffs' case rests wholly upon the proposition that they have the right to compel the railroad commission to make a rate by the carload instead of by the 100 pounds, or to give lower rates on cotton in round bales. There is no rule of the common law nor provision of the statute which requires the carrier or the commission to make rates based upon carload lots, nor is there any precedent or principle by which the reasonableness of a rate (as it affects individual shippers) made by carriers or by the commission can be determined by a comparison

of the profits derived from the shipment of different classes of freight."

* * *

"Plaintiffs can as well complain of lower rates given upon other articles; for instance, upon wheat, oats, and corn, neither of which would bear a charge equal to that placed upon cotton, either by the carload or by the 100 pounds. In truth, if such a rule were adopted as that proposed by the plaintiffs in this case, the commission's work could not possibly be sustained in any court, for it might, by comparison between rates on different articles, and by showing a difference in profits derived from the transportation of one over the other, destroy any schedule of rates that could be prepared."

* * *

"To make such difference in the rates upon cotton in flat bales and that in round bales would manifestly be unjust discrimination, and it was proper for the commission, in making rates, to bear in mind that the probable effect would be the creation of a monopoly to the detriment of the public. The owners of improved machinery have a right to all the benefits of its superiority over the old machinery for ginning and baling cotton that comes from the use of the machinery itself, but they have no right to ask the government to bend its policy to their aid in this respect to the injury of the citizenship of the state."

One or two other matters seem to justify brief mention. We are of the opinion that complainant overestimates the practicable saving to the carriers effected by loading a part of the cotton transported to the proposed minimum. Of course it is more profitable to haul 50,000 pounds at 20 cents *in one car* and get $100 than to haul 25,000 pounds at 30 cents and get only $75. On the other hand, it is more profitable to haul 50,000 pounds at 30 cents *in two cars* and get $150 than to haul the same amount at 20 cents in one car and get only $100. Obviously any inference from the former fact must be greatly modified by the latter, especially in view of the further fact that there is only a given quantity of cotton to be moved. In the nature of the case the amount saved by increasing the loadings *of a portion of one kind of traffic* must be quite limited and uncertain under the actual

and usual conditions of railway operation. Having regard to the volume of cotton tonnage and the supply of available equipment, it seems to us scarcely possible that a loss of one-third in gross revenue could be made up by the fewer cars used and the reduced cost of hauling a given quantity of that article. Undoubtedly in some instances, as of car famine and the like, the saving would be great for the time being, sufficient perhaps to compensate for a rate reduction of 33 ⅓ per cent, but for the most part and under ordinary circumstances the gain would be very much less and often so slight as to be inappreciable.

In this connection it is to be borne in mind that the adoption of a carload minimum as the condition of lower rates would not materially if at all increase the volume of cotton to be carried, and therefore any reduction in the rate would diminish to the same amount the gross income from this traffic. That a considerable saving in cost of movement would result in very many cases may be admitted, but if the rate reduction were no greater than to offset the actual gain of the carriers it might turn out, and the evidence indicates it would turn out, that most shippers would lose quite as much by reason of the increased expense of compression and loading as they would save in lower transportation charges. Indeed it may well be doubted, upon the testimony submitted as to the cost of baling by different methods, whether on the whole or in most cases there would be any saving to cotton shippers from the operation of a carload rule—the carload rate being only enough lower to equalize the reduced cost of hauling—except as such a rule might lead to a reduction of cotton rates generally. In other words, the adoption of complainant's proposal would not benefit the public. And this view of the matter, it may be observed, takes no account of any injury or loss to the owners of plantation and square-bale compress plants brought about by a rate adjustment which would favor the use of the round-bale process.

As above stated, we think the ruling sought by complainant should be considered with reference to its probable bearing upon other carriers than these defendants and upon the general movement of cotton. A lower rate from East St. Louis conditioned upon the minimum loadings proposed would undoubtedly af-

fect the present distribution of cotton as between different lines and routes, and tend immediately to increase shipments through the St. Louis gateway. Cotton is a highly competitive article. It has much the greatest value per pound of any of the leading agricultural products. The demand for it is constant and comes from many widely separated quarters. It is handled on exceedingly narrow margins and slight influences affect its price and movement. Out of all the competitive conditions to which it is subjected there has come about an apparently well adjusted and satisfactory relation of rates by different routes from the cotton growing districts to the numerous manufacturing points in this country and abroad. If cotton should be taken from East St. Louis to the New England mills or to North Atlantic seaports at relatively less cost than is now incurred, the carriers from Memphis and other points and to other mills and ports would be obliged to make a corresponding reduction. If those lines discovered that square-bale shippers could not or did not load cars to the required minimum, they would be virtually forced to grant the reduced rate on a lower minimum or on cotton in any quantity; and thus the ultimate and early result would be a general reduction in cotton rates and the same relation of rates as now exists. If that result followed, as we believe it would, the ruling which brought it about would be valueless to complainant. Even if we were convinced that its contention is well founded and ought to be sustained by such authority as the Commission possesses, we should still have much difficulty in seeing how as a practical matter the real object of complainant could be attained.

In cases like this it seems plain that a distinction should be drawn between the legal obligation of carriers and the discretion which they may rightfully exercise. We do not doubt that it would be lawful for these defendants and other carriers to establish carload and less than carload rates on cotton, with a reasonable difference between the two rates and a reasonable minimum which should secure to shippers the lower carload rates; but it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum.

No evidence has been offered to show that unreasonable rates are applied to cotton as that article is generally and for the most part prepared for transportation, and that issue is not involved in this proceeding. The complainant demands that lower rates be accorded on cotton in car-loads of 45,000 pounds or more, and that demand presents the only question we are called upon to determine. Upon all the facts and circumstances now disclosed, we are constrained to hold that the refusal of the carriers to grant such lower rates is not a violation of the regulating statute; and this conclusion is in harmony with our previous decisions. *Brownell* v. *Columbus & C. M. R. Co.* 5 I. C. C. Rep. 638; *Paine Bros. & Co.* v. *Lehigh Valley R. Co.* 7 I. C. C. Rep. 218; *Re Relative Rates upon Export & Domestic Traffic,* 8 I. C. C. Rep. 214; *Carr* v. *Northern P. R. Co.* 9 I. C. C. Rep. 1.

In our opinion the defendants are not acting unlawfully in the respects charged and therefore the complaint against them should be dismissed.

PROUTY, *Commissioner,* dissenting:

I am unable to agree in the conclusions reached by my associates in this case, and, since the principle is one of importance, wish to state my reasons for arriving at a different result.

The rates put in issue are those from East St. Louis to the Atlantic seaboard. The complainant makes two distinct claims. It insists, first, that to impose upon round-bale cotton the same rate which is charged square-bale cotton is an unjust discrimination under the third section, and second, that 30 cents per hundred pounds from East St. Louis to New York is in itself an unreasonable charge for the transportation of round-bale cotton.

The Commission holds that the carriers do not violate the Act to regulate commerce in refusing to make a distinction in their tariffs between cotton when offered for transportation compressed to different degrees of density. In this I am inclined to agree. In the transportation of cotton compression is universally recognized as an essential. The complainant compresses to more than twice the density of the square bale. There

is good ground for saying that cotton as presented for transportation by the complainant should be treated as a different commodity from cotton as ordinarily compressed, and that it is an undue discrimination against the complainant to impose upon its commodity the same transportation charges which are imposed upon the commodity of its competitor, the square compress; but in view of the wide limits within which carriers may properly regulate their own business we should perhaps hold that these defendants may apply the same rate to the transportation of cotton, compressed or uncompressed, in carloads or in less than carloads. It seems clear to me, however, that the rate which is imposed upon cotton as tendered by the complainant must be a reasonable one for the transportation of that commodity in that form, and that the defendants cannot exact from the complainant an unreasonable rate upon the plea that they carry that same article in some other form at a loss. For illustration, carriers engaged in the transportation of grain from East St. Louis to the Atlantic seaboard may, if they see fit, establish a carload minimum of 30,000 pounds, or no carload minimum at all, but they have no right to fix the rate upon the theory that only 30,000 pounds are transported in a car. In determining what rate is reasonable we should consider what can be and what is the actual carload. I think 30 cents per hundred pounds is too much for the carriage of cotton from East St. Louis to New York, when presented in such form that it can be easily loaded to 50,000 pounds, or, if required, to ten per cent beyond the marked capacity of the car.

The facts presented by this record which bear upon this point seem to be the following.

The plantation bale, or what is known as uncompressed cotton, has a density of 12½ pounds to the cubic foot and loads in the standard box car about 12,500 pounds. The ordinary compressed square bale has a density of from 22 to 23 pounds to the cubic foot and ordinarily loads in the standard car 25,000 pounds. The cotton offered by the complainant has a density of from 45 to 47 pounds to the cubic foot and ordinarily loads in the standard car 50,000 pounds. For many years rates on cotton from East St. Louis to New York have been, and now

are, $42\frac{1}{2}$ cents per hundred pounds upon uncompressed cotton and 30 cents upon compressed cotton. The complainant urges that these rates having been maintained by these defendants for many years without protest or objection must be assumed to be just and reasonable compensation for the service performed; and it further urges that if these rates are reasonable for the transportation of cotton in the form in which it has been carried in the past, it must of necessity follow that 30 cents per hundred pounds is unreasonable as applied to its product.

In determining what rates are reasonable for the carriage of various commodities no one thing has been oftener or more earnestly insisted upon by the carriers as a controlling element than car capacity. It has not only been given as a matter of opinion by traffic experts without number but has been demonstrated by mathematical computation that the cost of the service varies almost exactly with the ability to secure a heavy car loading. This Commission in its opinions has repeatedly recognized the substantial accuracy of this position. That it must be so is obvious from the most superficial consideration of the case before us. The ordinary carload of uncompressed cotton is 25,000 pounds and for hauling that carload from St. Louis to New York the carrier receives \$75. The ordinary loading of round-bale cotton is 50,000 pounds and for transporting that carload from East St. Louis to New York the carrier receives \$150. It must haul two cars of uncompressed cotton to earn the same amount of money which accrues from the hauling of a single carload of round-bale cotton. While the total weight of the car loaded with round-bale cotton is somewhat greater than the weight of the car loaded with square-bale cotton, it is evident that in earning the \$150 by the transportation of the square bale a second car must be provided and hauled and that the additional expense of the transportation, while not quite twice as great, is very much greater.

This same fact may be stated in another way. An ordinary box car weighs perhaps 36,000 pounds. The total weight of that car loaded with square-bale cotton would be 61,000 pounds and the carrier would receive at a rate of 30 cents per hundred

pounds $75 for the service or about 12.3 cents per hundred pounds for the gross weight of car and contents. If this same car were loaded with round-bale cotton it would weigh, car and contents, 86,000 pounds. At a rate of 20 cents per hundred pounds the total revenue would be $100 or about 11.6 cents per hundred pounds for the gross weight carried. When it is remembered, therefore, that the car in one case earns $100 while in the other it earns $75 it must be evident that cotton compressed to a density which permits of a loading of 50,000 pounds to the car is as good business, looking only to cost of carriage, at 20 cents per hundred pounds as is cotton which will only load 25,000 pounds to the car at 30 cents. It seems to me that the complainant is entirely justified in its claim that if 30 cents per hundred is a reasonable rate for the transportation of cotton in carloads of 25,000 pounds to the car it is entirely unreasonable when applied to cotton so compressed as to be capable of loading 50,000 pounds to the car.

The acts of the defendants themselves clearly substantiate this conclusion. When this cotton was offered for shipment in 1900 the railroads voluntarily agreed to accord it a rate from East St. Louis of 20 cents per hundred pounds. The same rate was applied during the season of 1901-02. The complainant was notified at the beginning of the season of 1902-03 that its rate would be advanced to 30 cents per hundred pounds. The traffic manager of the Big Four Railroad stated to the agent of the complainant at St. Louis, when giving notice of this advance that in his opinion the rate of 20 cents was a reasonable one and should be continued but that his line could not name that rate without the consent of the Central Freight Association. He subsequently stated to the agent of the complainant that this matter had again been laid before the committee of that association and that the proposition to accord round bale cotton a rate of 20 cents had been defeated by one vote. This was not denied on the part of the defendants.

The rate of 20 cents which the complainant enjoyed was not published by the defendants, and was not, therefore, a lawful rate; but it was an open rate in the sense that all the defendants except the Pennsylvania accorded it and that shippers of cotton

generally knew of it. It seems probable that, as stated by the Commission, there may have been some concession from the regular 30-cent rate which should have been applied to square-bale cotton, although this does not clearly appear. If so it would simply indicate that the actual difference between round-bale cotton and square-bale cotton was something less than 10 cents per hundred pounds; there is no dispute that for these two years, until the Central Freight Association interfered, these defendant lines gave to the product of the complainant a rate substantially one-third less than was applied to ordinary square-bale cotton and that this was done upon the ground that the cost of transportation was enough less to warrant the difference.

Hay as compressed in the ordinary bale loads about 20,000 pounds to the car. It appears that the process used by the complainant in the compression of cotton can also be applied to the compression of hay. One or more of these defendants did for several years and still does name a rate on hay which is one-third less than the regular rate when so compressed as to load 50,000 pounds to the car.

It is customary upon some railways, but not these defendants,' to make a single rate on cotton which applies both to compressed and uncompressed. The railway does not transport the cotton in its uncompressed state, but is to the expense of compressing it for its own convenience and usually pays in the vicinity of 10 cents per hundred pounds for this service. If the carrier can afford to pay 10 cents per hundred pounds for increasing the loading of its cars from 12,500 to 25,000 pounds, can it not well afford to pay 10 cents per hundred pounds for increasing that loading from 25,000 to 50,000 pounds?

The present rate on grain and grain products from East St. Louis to New York for domestic consumption is 20½ cents per hundred pounds, for export 17½ per hundred pounds, except in case of grain on through bill when it is 16 cents per hundred pounds. The minimum carload weight on most kinds of domestic grain is 40,000 and on grain products 35,000 pounds. When for export both grain and grain products must be loaded to 10 per cent beyond the marked capacity of the

car. The testimony in this case shows that cotton in the form offered by the complainant will readily load 10 per cent beyond the marked capacity of the car. The actual cost of transporting Lowry bale cotton from East St. Louis to New York is no greater than the actual cost of carrying grain or the products of grain. The commodity itself is more valuable and the risk from fire may be somewhat greater, although in the case of the round-bale this is slight, and a somewhat higher rate may perhaps be charged than for the transportation of grain or the products of grain, but upon what possible theory can that rate be almost twice as high. From all the foregoing facts it appears to me perfectly clear that when cotton is presented for transportation in such condition that it will load 10 per cent beyond the marked capacity of the car, 30 cents per hundred pounds from East St. Louis to New York is an utterly unreasonable charge for its carriage.

Various reasons are alleged by the Commission for declining to find that the complainant is entitled to a lower rate than 30 cents per hundred pounds. It is said, for example, that cost of service is not the test of a reasonable rate. This is undoubtedly true in many cases. There are many instances in which there is no intimate connection between cost of carriage and the rate charged for that carriage. But with respect to a staple commodity like cotton I believe that there should be a very intimate connection between cost of carriage and the rate charged the public and that if in any way the cost of carriage has been or can be actually reduced one-third the public should be given the benefit of that reduction. If cotton rates are sufficiently low a mere reduction of the rate is not necessarily either just or of benefit to the public, since you are simply taking away from one part of the public, the railroad, and giving to another part of the public. But the proposition here is not to take away from the railroad any part of its revenue by this reduction in rate, but to compel the railway to recognize a form of transportation which works an actual saving in the cost of moving this great crop to market amounting in the aggregate to millions of dollars annually.

Suppose, for example, that up to the present time cotton had

been uniformly moved in the plantation bale, with a density of 12½ pounds to the cubic foot. The device of this complainant increases that density four times and thereby reduces the cost of moving the cotton crop of this country by at least 100 per cent. Are the railroads at liberty to impose the old rate for the carriage of cotton presented in the new form? I insist they are not. They may perhaps carry the plantation bale at the same rate which they charge for the round bale,—that is a question between the management and its stockholders—, but they have no right to compel the public to pay an unreasonable price for the carriage of the round bale. If they decline to take advantage of this manifest economy they and not the public should suffer.

Not long ago rates on hay were advanced in official classification territory and the only substantial reason given by the carriers for the higher rate was the light loading of that commodity. The testimony showed that only from 20,000 to 22,000 pounds could be put into an ordinary box car. Suppose now that some process were invented by which the density of compressed hay were so increased that not 20,000 but 50,000 pounds could be loaded into a car. Would not the excuse of the carriers disappear and must they not upon the same theory on which they justify the advance reduce the rate even lower than it had been before?

It is said a minimum of 50,000 pounds would be greater than that ordinarily applied to grain, grain products, lumber, coal, etc., and that there is no reason for establishing in favor of the complainant so high a minimum. This entirely misconceives my position. I am not urging that these carriers be required to establish any minimum; I am simply insisting that they should recognize the density of the complainant's cotton in fixing the rate charged for its transportation. If they prefer to name a rate for the carriage of cotton which recognizes neither carload not minimum they may do so, or they may establish a rule which will secure the loading which the lower rate justifies. The application of different rates to the carriage of the same article when offered in different degrees of density is of

common occurrence as the most casual examination of the official classification will show.

It is said that railways cannot be required to reduce their rates to meet every slight change in form of the commodity or article offered, although there be an actual saving in the cost of the service, and to this proposition the case *Derr Mfg. Co.* v. *Pennsylvania R. Co.,* 9 I. C. C. Rep. 646, is cited. There is no question about the correctness of this proposition. No classification and no schedule of rates can do absolute justice to all shippers. Classifications and schedules must be general and must, therefore, create more or less discrimination. The case cited is an excellent illustration of this principle. The complainant was a manufacturer of bristle blacking brushes, known as daubers. In the manufacture of his brush he used an iron handle; whereas, the ordinary dauber had a wooden handle. The result was that his article when packed for shipment weighed more than the wooden-handled dauber and more than most bristle brushes, while it was of less value. For this reason he claimed that the classification of his article ought to be lower than that of bristle brushes in general; but the Commission held otherwise upon the ground above indicated.

What possible analogy between that case and the one before us? We have here one of the staple products of this country; the only great staple which is invariably moved some distance, and usually a long distance from the point of production to the point of consumption. The invention of the complainant reduces the actual cost of that transportation by rail one-third, at least, and yet we are told that the railways of this country may decline to recognize the economy made possible by this process, and in confirmation we are cited to a decision holding that carriers need make no distinction in classification between a blacking dauber with an iron and one with a wooden handle.

It is said that if the carriers are required to make a lower rate for cotton as compressed by the compresses of the complainant they create a condition which can only be taken advantage of by a small part of the total cotton product of this country.

This suggestion resembles that of the fond mother who de-

clared that her boy should never go near the water until he could swim. The cost of compression by the Lowry bale is as great, possibly a trifle greater than by the square bale. The round bale and the square bale sell for exactly the same price at the mill. The only advantage of the round bale is that it produces a bale of greater density and thereby reduces the actual cost of movement materially. If this advantage in transportation is not recognized, it has no value and cannot come into use. If the railways decline to accord to this form of compression the saving in cost of transportation which it actually makes, or some reasonable part of it, that bale never can be offered for transportation in very large quantity.

It can hardly be said, however, that the amount of cotton presented by this complainant, although it may be but a fraction of the entire crop, is insignificant. The complainant has handled four hundred thousand bales in a single year. It paid to these defendants for the transportation of its product $50,000 per year on a 20-cent rate, and would have been compelled to pay $75,000 upon a 30-cent rate. $25,000 annually cannot be regarded as too trifling a sum to engage the attention of this Commission. But this is insignificant in comparison with the real interests involved.

I am not a friend of monopolies, and if I thought that the according of a lower rate to cotton of greater density would produce a monopoly which might finally become burdensome that would be to my mind a very substantial reason for declining the rate. I see nothing in this case to even indicate that. There is another round bale made in a different way of substantially the same density as the Lowry bale. There are processes by which square cotton can be compressed to nearly the density of the Lowry bale. Other forms of compression would be invented to meet the new conditions. So far from creating a monopoly, I think it would tend to modify the semi-monopoly in the compression of cotton which exists to-day.

It is said that $12,000,000 are invested in the square-bale compresses of this country and that these investments pay an annual return of from 20 to 50 per cent. They are to some extent owned by railroads. The square compress companies have as-

sumed the burden of defending this complaint. While it is hardly probable that the round bale, even if given its just transportation advantage, would come into as extensive use as the square bale, it is altogether probable that the square compress would be obliged to perform the service of compression for a less sum while rendering a better service.

It is said that the complainant is only interested in obtaining a lower rate upon its product than is accorded to the square bale and that it has no real interest in the reasonableness of the rate. If rates on all cotton from East St. Louis to the seaboard were reduced to 20 cents per hundred pounds this would in no respect benefit the complainant.

That is undoubtedly the case. The complainant insists that a reasonable rate should be accorded to it because it believes that the defendants would be compelled, in the preservation of their own legitimate interests, to impose a higher rate upon cotton having a less density. While, however, the complainant has no direct interest in the reasonableness of the rate in question, the public has, and it has an interest in seeing that those competitive conditions which are relied upon to produce reasonable rates are, in so far as may be, preserved and protected. My fundamental objection to the decision of the Commission is that it declines to accord to the invention of the complainant any and all opportunity to compete; that it permits the railway to refuse to avail itself of a cheaper method of transportation which would result in the saving of millions of dollars in the cost of transporting the cotton of this country.

Northern mills at the present time consume approximately 2,000,000 bales annually. The rate from East St. Louis to New England points is 35 cents per hundred pounds. Assuming that the cost of transportation from the point of production in the south to the point of consumption in the north is reduced $12\frac{1}{2}$ cents per hundred pounds, (and this is much short of the actual fact) by the invention of the complainant and by similar processes, this would amount to $1,250,000 annually. It is suggested that the cost of compression by the Lowry bale is more than by the square compress, and that the total cost of marketing cotton is as great by the round bale as by the square. The com-

plainant insists that while the cost of compression may be a trifle more by its method this is as nothing compared to the saving in transportation. We deal with transportation alone, and while we may with propriety to some extent examine various commercial and industrial conditions as bearing upon proper rates and regulations for transportation, I see nothing of that sort in this case which should control our decision. Our business is not to say that cotton shall be compressed by one process or the other; not to preserve investments in one case or to give value to patents in another case, but simply to see that the railways accord fair and just rates to all parties. When that has been done these processes must stand or fall as they can in the struggle for existence.

It is true in the very nature of things that cotton compressed to a density of 47 pounds to the cubic foot is entitled to a lower rate of transportation than cotton compressed to a density of 23 pounds to the cubic foot. Wherever the round bale has come into fair competition with the less dense square bale it has won a better rate. It has an advantage of 33⅓ per cent from the Gulf ports. It has an advantage of 25 per cent from the Atlantic ports. It has no advantage by water from the Gulf to the Atlantic ports because the steamship lines there belong to the same traffic associations and are dominated by the same influences which control the railways. It did win for itself a rate substantially 33⅓ per cent better from East St. Louis to New York so long as competition was permitted. That rate was only withdrawn when the committee of the Central Freight Association had decreed by a majority of a single vote that it should be withdrawn.

I find it difficult to believe that the function of this Commission should be to sustain illegal transactions of that character when they involve directly the elimination of competition and the withdrawal of rates which competition has produced. I believe it to be the duty of this Commission, in so far as it has the power, to compel railroads to accord to the product of this complainant the just and reasonable rate to which upon every test which has ever been applied either by the railways or this Commission it is entitled, and to leave the result to the competitive

influences which should in all similar cases control. The conclusion to which we have come absolutely ordains that this invention shall die although its life would mean no possible injury to anyone except the square compress and a possible saving of millions of dollars annually to the people of this country. It means much more; it means that no similar invention shall live, and that this enormous waste in the transportation of this great crop shall permanently continue.

No. 829.

D. W. MINER *v.* NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Decided November 1, 1905.

Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses, and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard, but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about one-half mile distant and damages his business from $20 to $100 per car. The capacity in and about the Canal Street Yard of the track which may b used for unloading meat is limited, and defendant's refusal to continue the privilege is apparently upon the assumption that its allowance would involve extension of the privilege to the unloading of all perishable commodities at that point.

Held: 1. That there is no such competitive relation between fresh meat and, for example, fresh fruit that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other.

2. That complainant is subjected to undue prejudice under the circumstances of this case.

Harrison A. McKenney and *John S. Whitehouse* for complainant.

Edward G. Buckland for defendant.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The complainant is a wholesale dealer in fresh meats at Providence, R. I. His meat is shipped under refrigeration from St. Louis, Missouri, and he complains that the defendant, which is the delivering carrier, discriminates between himself and his competitors in the delivery of carloads of meat.

Canal Street in the city of Providence runs nearly north and south, and along the west side of that street in close proximity extends what is called a canal. Just west of this canal, running nearly parallel to it, is a switch track of the defendant, known in this case as the "beef track."

There are some seven or eight firms engaged in the wholesaling of fresh meat in the city of Providence and they all receive their supplies from the west in the same manner as does the complainant. All of these concerns, except the complainant, own or lease buildings which extend across the canal so that the front of the building opens upon Canal Street while the back opens upon the beef track just mentioned. The store of the complainant is situated opposite those of the other dealers upon the east side of Canal Street. The firm of Schwarzchild & Sulzberger, commonly known and hereafter referred to as the S. & S. Co., controls one of these buildings across the canal which it occupied until some two or three years ago, when in order to obtain more room it rented this building to parties engaged in other business and secured for its own accommodation quarters upon the east side of Canal Street not far from the store of the complainant. It did not appear by what title the various competitors of the complainant occupied these different buildings across the canal, but it did appear that they did not derive their title from the defendant railroad company, and it further appeared that they had no interest in the beef track so called and no right to insist upon any accommodation in respect to that track or yard by virtue of their occupancy of these buildings. It was conceded that the defendant might remove the beef track at its pleasure.

The competitors of the complainant who occupy buildings across the canal opening upon this beef track have their carloads

of beef placed opposite their respective buildings by the defendant and unload them directly from the car into the building. The complainant desires to have his car also placed on the beef track or upon one of several spur tracks nearby so that he may unload his meat into a wagon and haul it across the canal and across the street to his place of business a distance of two or three hundred feet. The defendant declines to place the cars of the complainant in this yard but insists on placing them in what is known as the West Yard which compels the complainant to cart his dressed meat about one-half mile in order to reach his storehouse; and this is the discrimination complained of.

The yard of the defendant in which the complainant desires to unload his meat is called the Canal Street Yard and is limited in extent. Within it are situated two depots, connected by a freight platform, which extend nearly parallel with the canal. These depots at the present time are used exclusively for the delivery of inward freight. They are approached by teams engaged in hauling away such freight on the side next the canal and the space between the depots and the canal is so narrow that it is much congested by this traffic. The room occupied by the beef track itself is required for the convenient operation of these depots to a considerable extent and cars standing upon that track necessarily interfere more or less with the movement of teams frequenting the depots. Formerly bulk freight was delivered from cars to some extent in this yard but several years ago the defendant provided the West Yard, which is large and commodious, for the delivery of such freight, especially when of a perishable nature, and at the present time no deliveries are made from the car to the wagon under ordinary circumstances at the Canal Street Yard. The foregoing facts were not in controversy.

The defendant insisted that owing to the congestion in the Canal Street Yard occasioned by the handling of its inward freight it could not without serious inconvenience to its patrons make delivery of carload freight in that yard. The complainant upon the other hand urged that the defendant might make delivery to him of his freight without discommoding its other patrons and he pointed out the location in which his cars might

be placed. He also insisted that he was seriously damaged by being compelled to haul his meat from the West Yard andintroduced evidence tending to show the amount of such damage. From the testimony and from an inspection of the premises we find.

1. The defendant could not, without serious inconvenience in the handling of its inward business, permit the general unloading of carload freight in the Canal Street Yard. Its regulation that such freight shall be unloaded in the West Yard is a just and proper one so far as the bulk of its business is concerned.

2. The S. & S. Company after moving from its building on the canal to its present store continued to have its cars placed on the beef track nearly opposite its canal building and unloaded the meat from the west side of the car into a wagon and hauled it across the canal to its store on the opposite side of the street in the same manner that the complainant desires to do. This continued until about the time of the filing of the complaint in this case when the cars of the S. & S. Co. were placed in the West Yard and that company was compelled to unload its meat there. It did not clearly appear what knowledge the defendant had as to the unloading of these cars by the S. & S. Co. after it moved into its new quarters but we are inclined to think that the subject was never called to the attention of the defendant in such a way that any consideration was given to it. We also find that at various times the competitors of the complainant, who own buildings on the canal, have unloaded the contents of their cars into teams standing on the west side of the beef track, this being done to save the labor of transferring through the building to the team at the other end. This does not appear to have been done to any great extent nor to have been called specifically to the attention of the defendant. The defendant now enforces the rule that no bulk freight shall be delivered in the Canal Street Yard except from the east side of the track into the buildings located along the canal. Whoever owns such a building may have his car placed opposite to it and unload directly into the building. There is no room on the east side where it is possible to place a team.

3. The complainant receives from three to four carloads of

fresh meat per week, and the S. & S. Co. from four to six carloads per week. The complainant generally unloads his meat early in the morning, as a rule before seven o'clock, the hour at which the inward depots at the Canal Street Yard are opened to the general public. The S. & S. Co. also unloads its cars in the early morning.

4. The half-mile haul from the West Yard to the complainant's store affects more or less at all times of the year the selling qualities of the meat and in warm weather this is serious. The damage seems to be more to the appearance than in any actual deterioration but it was said that the selling value was depreciated by this means from ten to sixty cents per hundred pounds depending upon weather conditions and that a fair average would perhaps be 40 cents per hundred pounds. We find that the complainant is damaged by being obliged to unload his meat in the West Yard as compared to unloading it at the Canal Street Yard from 10 to 50 cents per hundred pounds which would be from about $20 to $100 per carload.

5. We think and find that the defendant might permit the S. & S. Co. and the complainant to unload the carloads of dressed meat now being received by them in the Canal Street Yard without serious interference with the other users of that yard and that, in view of the very considerable damage which these shippers incur by reason of their inability to so unload their shipments the defendant should accord to them this privilege.

6. The complainant located where he is something like a year and a half ago. He then knew that the S. & S. Co. was receiving its dressed meat in the manner stated and that other deliveries of carload freight were made at the Canal Street Yard and he assumed that his own cars would be delivered at that point but did not apply to the defendant and had no assurance from it. The complainant desires and probably requires to be located in the district where similar houses are doing business.

7. The defendant has not intended to discriminate against this complainant. It apparently understands that if it permits this delivery of dressed meat it must allow a delivery of other perishable commodities and has for this reason made the rule above stated which it impartially enforces. While in fact the

S. & S Co. received its freight at the Canal Street Yard for a time, while a similar privilege was denied the complainant, we do not think this was, upon the part of this defendant or its agents, with intent to prefer that company.

CONCLUSIONS.

It seems to have been assumed by the defendant that if it permits the complainant to unload his carloads of meat in the Canal Street Yard it must also permit the unloading of all perishable commodities at that point if requested. We do not so construe the statute. There is no such competitive relation between fresh meat and fruit for example that it is of necessity an undue discrimination to accord a privilege to the one commodity which is refused to the other. It might as well be said that no distinction could be made between perishable and nonperishable articles.

The defendant acting in good faith, although perhaps somewhat influenced by the above misinterpretation of the law, has decided that it cannot properly in the operation of its road permit the complainant to unload his meat in the Canal Street Yard. The Commission has found as a matter of fact that it might under existing conditions permit such unloading at that point, that to deny this privilege costs the complainant from $20 to $100 per carload and that under all the circumstances the defendant ought to allow it.

It is not clear whether the action of the defendant in this particular constitutes a violation of the Act to regulate commerce. The competitors of the complainant by virtue of their occupancy of their storehouses on the canal, which they in no way derive from the defendant, enjoy an advantage of locality which the complainant does not and it is by no means certain that this carrier in recognizing that advantage and declining to accord the complainant a privilege which in the honest judgment of its officials cannot properly be accorded is guilty of any undue prejudice against him. It has, however, seemed clear to us that the complainant ought not, under the circumstances, to be subjected to this very considerable and entirely unnecessary pecuniary damage; that the defendant, having it in its power to put the

complainant more nearly upon a level with his competitors ought in justice to do so and that its refusal is an undue prejudice against the traffic of the complainant. The defendant ought not in our judgment to decline to make deliveries to the competitors of the complainant who occupy these buildings abutting upon its beef track, for to do so would be unnecessary waste of opportunity, but it ought, in so far as it reasonably can, to put the complainant upon a level with them.

We have decided, therefore, to make an order in favor of the complainant unless the defendant upon further consideration should see fit to permit the unloading of these cars in its Canal Street Yard. In doubtful cases like this we cannot overlook the consideration that no order of ours can be made binding upon the defendant until it has passed the scrutiny of the courts, while if we err in our construction of the law against the complainant he has no relief, since from our decision he cannot appeal. If the doubtful question were one of fact, when our finding might have some evidentiary force, it would be otherwise.

No. 240.

IN THE MATTER OF PROPOSED INCREASE IN THE MINIMUM PERCENTAGE OF CARS IN TRAINS REQUIRED TO BE OPERATED WITH POWER OR TRAIN BRAKES.

Decided November 15, 1905.

The manifest purpose of the amended Safety Appliance Law is that all freight cars shall be equipped with air-brakes, and that all brakes shall be used and operated, and such condition is necessary to the safety of both railway employees and the traveling public, besides facilitating traffic movement and resulting in the handling of traffic with greater economy. Increasing the minimum percentage of air-braked cars in trains from 50 to 75 per cent would result in the earlier operation of trains fully equipped with air-brakes and accelerate the removal from service of old and comparatively unsafe cars now unequipped with that appliance; but under the present public demand the use of every available car is required to move the unusual volume of traffic now offered and ordering such increased percentage into immediate effect would hamper railway operations and impose severe hardship upon shippers and the general public. After due notice and full hearing, *Held:* That the minimum percentage of air-braked freight cars in trains on railroads used in interstate commerce shall stand increased to 75 per cent on and after August 1, 1906.

W. A. Gardner for the Chicago & Northwestern Railway Company.

C. A. Seley for the Chicago, Rock Island & Pacific Railway Company.

Theodore W. Reath, N. D. Maher and *E. S. White* for the Norfolk & Western Railway Company.

John G. Wilson, F. Kirby, T. Fitzgerald, J. E. Muhlfeld, E. T. White, and *R. L. Erman* for the Baltimore & Ohio Railroad Company.

Frank H. Platt and *A. E. Mitchell* for the Lehigh Valley Railroad Company.

Claudian B. Northrop, J. N. Seale and *A. Stewart* for the Southern Railway Company.

George S. Patterson, D. F. Crawford, A. W. Gibbs, William H. Fisher, J. C. McCullough and *G. W. Creighton* for the Pennsylvania Railroad Company.

LeGrand Parish and *C. A. Wheaton* for the Lake Shore & Michigan Southern Railway Company and the New York Central & Hudson River Railroad and affiliated lines.

C. Peter Clark for the Buffalo & Susquehanna Railroad Company.

R. E. Smith for the Atlantic Coast Line Railroad Company.

F. H. Clark for the Chicago, Burlington & Quincy Railway Company.

E. E. Clark for the Order of Railway Conductors.

P. H. Morrissey for the Brotherhood of Railroad Trainmen.

W. S. Stone for the Brotherhood of Locomotive Engineers.

H. R. Fuller, Legislative Representative of the Brotherhoods of Railroad Trainmen, Locomotive Engineers, Locomotive Firemen, and the Order of Railway Conductors.

Frank T. Hawley for the Switchmen's Union of North America.

REPORT AND OPINION OF THE COMMISSION.

COCKRELL, *Commissioner:*

The Act of Congress of March 2, 1893, commonly known as the Safety Appliance Law, amended April 1, 1896, was further amended in important particulars by the Act approved March 2, 1903.

The second section of this amendment relates to the use of power or train brakes, and requires that whenever any train is operated with such brakes, as provided in the original Act, "not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train." It also requires that "all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated." A further provision empowers the Interstate Commerce Commis-

sion, from time to time, after full hearing, to increase the minimum percentage of cars in "any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid." The evident purpose of the Act is to require that all power-braked cars associated together in trains shall have their brakes used and operated, with the ultimate intent that all trains on railroads engaged in interstate commerce shall be operated with a full complement of power brakes.

This amendment went into effect September 1, 1903, except as to a few carriers that were granted extensions of time within which to comply with certain of its provisions by the Commission's order of October 15, 1903. The extensions so granted fully expired on July 1, 1904, since which date the Act has been in full force and effect.

The Commission's attention having been called to dangerous conditions arising in train operation from the "buckling" of freight trains under emergency applications of the air brakes, on trains operated with the minimum percentage of such brakes required by law, it seemed proper that steps should be taken to increase that minimum, if practicable. The need for such action was emphasized by the fact that in many instances it was apparently assumed that the law was complied with when the minimum percentage of power-braked cars had their brakes used and operated, without reference to the further provision that all power-braked cars associated with such minimum percentage should also have their brakes used and operated. Reports made to the Commission by its inspectors showed many trains operated with the minimum of power brakes in use, when by the simple operation of coupling up the hose on all power-braked cars associated together a much higher percentage could have been secured. The purpose of the Act to require the full use and operation of brakes on all power-braked cars associated together in trains was thus defeated.

An order was accordingly issued on August 11, 1905, calling upon all common carriers subject to the Safety Appliance Act, as amended, to report to the Commission on or before October 1, 1905, (1) the number of freight cars owned, (2) the number of such cars equipped with air brakes, and (3) the average percent-

age of air-braked cars used in trains during the six months prior to September 1, 1905. At the same time the Commission announced its intention of setting the matter for hearing with a view of issuing an order requiring an increase in the minimum percentage of power-braked cars which shall have their brakes used and operated, if such an order should appear justified by the statements and testimony presented.

In response to this order returns were received from practically all common carriers subject to the Act. These returns showed a total of 1,790,113 freight cars owned on October 1, 1905, of which 1,564,396 were equipped with air brakes. This information is approximately correct. On June 30, 1904, there were 1,692,194 freight cars engaged in freight service, of which 1,434,386 were equipped with air brakes. From the best obtainable data there are at present 111,122 private freight cars in the United States, practically all of which are equipped with air brakes.

The Commission thereupon issued an order, on October 19, 1905, setting the matter for hearing on November 2, 1905. Notice of this hearing was given to all carriers subject to the Act, as well as the chief executive officers of the organizations of railroad employees, who were present or represented at the hearing.

It was announced at the opening of the hearing that it appeared to the Commission upon examination of the reports received from the carriers, taking into account the contemplation of the law, that the time had come when this matter should be considered. It was further suggested, in view of the evident purpose of this law, commonly known as the amended Safety Appliance Law, in view of the state of equipment as disclosed by these reports, and in view of the fact that since the order for this hearing was made communications had been received from a considerable number of carriers, to the effect that they not only have no opposition to an increased minimum, but are in favor of such action by the Commission, that we might for the purpose of saving time and expediting the inquiry regard this proceeding as in the nature of an order to show cause why an order should not be made, and so hear first those who wish to make opposition to any order of the kind; and for the purpose of giving definiteness to the inquiry it was suggested as a tentative proposal that if

any order is made, it should be one requiring 75 per cent as the minimum after the first of January next.

Not all of the carriers appeared at this hearing. A large number apparently considered that no serious inconvenience would result from any reasonable order the Commission might make in the matter; indeed, the managers of several important railroads, in response to the notice of hearing, wrote the Commission to this effect. It appeared that the railroads represented were running a majority of their trains with a percentage of air brakes higher than the minimum required by law at the present time, but, in some instances, owing to the requirements of special classes of traffic, difficulties were experienced in obtaining the minimum, and it was contended that any increase in percentage at this time would impose a hardship upon the roads which they would find great difficulty in overcoming. It was stated that such a requirement would result in congestion and delay to traffic and cause great annoyance, inconvenience and absolute loss to shippers.

It was stated that the railroads are now called upon to handle a larger volume of traffic than ever before, and that every car that can be obtained is constantly needed to conduct the business; in fact, that it is impossible to obtain a sufficient number of cars, and that all roads are behind in their orders. It was insisted that an increase in percentage could not be maintained without a considerable increase in the total number of cars equipped, and in the present state of business it was entirely impracticable to withdraw cars from service for the purpose of equipping them. Furthermore, it appeared that a great many of these unequipped cars are old and of light construction, not considered worth equipping with air brakes, the intention of the carriers being to take them out of service and break them up as rapidly as they can be replaced by cars of modern construction. It was shown that all new cars are fully equipped with air brakes, but that car builders are unable to furnish new cars as rapidly as needed owing to the press of orders. It was developed that these old cars are generally used for special service, such as the coal and coke trade, this being due in a measure to the construction of many of the coal breakers at mines not be-

ing fitted to receive the large modern cars. The fact that these cars are relegated to a particular service and kept together as far as possible increases the difficulty of making up trains engaged in such service with a higher percentage of air brakes than now required. It was stated to be the intention of the carriers to retire these cars from service as rapidly as conditions will permit, as it was admitted that their presence in trains, associated with cars of modern construction, constitutes a menace to safety. Owing to the present requirements of traffic, however, it is said that the danger is one that cannot well be avoided, but care is taken to minimize it as far as practicable by placing the light cars together at the rear end of trains. It did not appear that there would be any difficulty in obtaining brakes for the purpose of equipping these cars, as information received from two manufacturers of air brakes was to the effect that they could furnish 70,000 sets of brakes by January 1, 1906. The contention was that the majority of these old cars are not worth equipping, and they are being used because of business requirements, and also because it is desired to get as much service as possible out of them before they are broken up. It was stated that the comparatively few old cars worth equipping are being fitted with air brakes as rapidly as conditions will permit.

It was admitted that the use of all air is the ideal condition towards which all roads are working, as it is recognized that trains wholly equipped are operated with greater safety both to the employees and the traveling public, besides being operated with greater economy. Trains wholly equipped with air give greater control and enable stops to be made in shorter distances in cases of emergency. Wholly equipped trains also enable the conductor of the train to share the responsibility of control with the engineer, as by the air gauge and brake valve in caboose at rear end of train the conductor is at all times enabled to observe that required train-line pressure is maintained, and in case of an emergency arising without the knowledge of the engineer the train can be stopped with the apparatus at the rear end. The conductor is also enabled to hold up the engineer promptly and certainly in cases where the latter for any

reason runs past meeting points or danger signals, or fails to observe orders to slow-down or stop at certain points. It was admitted that an increase in percentage would reduce the liability of trains "buckling" in emergency stops, and would increase the safety of employees. The only objection to such increase was on the score of its impracticability at the present time owing to conditions above set forth.

That an increase in the present minimum percentage is in the line of good practice is shown by the action of a number of carriers that have already increased the percentage above the minimum now required by law. It appears also that many carriers refuse to accept cars in interchange unless they are equipped with air brakes, and have enforced this rule for some time past. In this connection it may be noted that the Philadelphia & Reading and Delaware, Lackawanna & Western Railroads, both doing an extensive coal and coke business, have issued instructions requiring a minimum of 75 per cent and 70 per cent respectively, in all trains operated on their lines. Other extensive coal carrying roads, such as the Hocking Valley, Toledo & Ohio Central, Zanesville & Western and Kanawha & Michigan, require a minimum of 75 per cent. The Seaboard Air Line Railway also, operating in the same territory as roads represented here protesting against an increase and presumably handling similar classes of traffic under substantially similar conditions, requires a minimum of 75 per cent in all its trains. It will thus be noted that the conditions complained of as operating against an increase in the minimum percentage required by law are merely local and transitory, affecting comparatively few roads, and are being overcome as rapidly as practicable. It was stated that the Master Car Builders' Association, representing practically all the railroads in the United States, have issued a rule requiring that all cars offered in interchange after September 1, 1907, must be equipped with air brakes, and it was contended that the operation of this rule would of itself result in the complete equipment of all cars with air brakes by the date mentioned.

In this connection it is contended that when all cars are equipped with air brakes it will be unnecessary for the Commis-

sion to make any order establishing a definite minimum percentage of cars which must have their brakes used and operated, for the reason that the law itself requires that "all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated," and with trains composed of all air-braked cars the association of such cars together must be complete, necessitating their full use and operation by the terms of the law. An equipped car having a defective brake forms no bar to the operation of all other equipped cars in the train which may be associated together, for the reason that the defective car may be simply cut out, causing no break in the continuity of the train line. It is the unequipped car associated with the equipped cars, thus causing a break in the continuity of the train line, that causes the difficulty of associating a larger number of air-braked cars together in trains, except by extra switching, thus adding to the difficulties of handling traffic expeditiously and aggravating the congestion in yards. When all cars are equipped these difficulties will disappear.

It is the opinion of the Commission that all cars should be equipped with air brakes, and that all brakes should be used and operated; and this is unmistakably the intent of the law. This is a condition that is required in the interests of safety, both to employees and the traveling public. It will also facilitate the movement of traffic and permit of its being handled with greater economy, as is evidenced by the testimony in behalf of the railroads. An increase in the present minimum percentage is a move in the right direction, and the Commission is convinced that it should be made. The only question is as to the date when such increase shall take effect.

From the evidence before the Commission it appears that an increase in the required percentage of air brakes to be used should be made, and that this increase should be to 75 per cent, as a means of hastening the operation of trains with a full complement of air brakes and the removal from service of the old and comparatively unsafe cars which are now unequipped. It further appears that the demands of the public require the use of every available car to move the unusual traffic that is

now offered, and to make such an order immediately effective would greatly hamper the operations of the railroads and result in severe hardship to shippers and the public generally.

The Commission is convinced, however, that no serious inconvenience will result to any interest by requiring that the minimum shall be increased to 75 per cent on and after the first day of August, 1906, and an order will be made to this effect.

ORDER OF THE COMMISSION.

IT IS ORDERED: That on and after August 1, 1906, on all railroads used in interstate commerce, whenever, as required by the Safety Appliance Act as amended March 2, 1903, any train is operated with power or train brakes, not less than 75 per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train, and all power-braked cars in every such train which are associated together with the said 75 per centum shall have their brakes so used and operated.

A true copy:

Edw. A. Moseley,
Secretary.

No. 812.

RED ROCK FUEL COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY.

Decided Nov. 25, 1905.

1. A State has jurisdiction to enact that carriers of coal therein shall provide track connections with all mines within its borders, but the power of the State in that respect arises from its authority over State commerce and does not constitute any limitation upon the exclusive power of Congress to regulate interstate commerce.
2. The enactment by Congress in section three of the Act to regulate commerce that the carriers affected thereby shall not subject persons, localities or descriptions of traffic to undue prejudice or unreasonable disadvantage, or give any undue or unreasonable preference or advantage to persons, localities or kinds of traffic in any respect whatsoever applies to discrimination in facilities or instrumentalities of shipment or carriage, and while the Commission has no authority to order a carrier to put in sidetrack connections, or to prescribe the terms or conditions relating to the construction of such connections, its jurisdiction does extend to any case of wrongful prejudice resulting from discrimination in the provision of such facilities or instrumentalities of shipment or carriage, including sidetrack connections.
3. Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations cannot be justified by the fact of long-standing agreements with favored mine operators and other shippers, nor is it a defense to the charge of discrimination that the facilities provided the favored persons may be withdrawn at the will of the one who grants them.
4. Defendant declines to permit a sidetrack connection between its line and

a switch or sidetrack to complainant's coal mine in the Fairmont District of West Virginia for the purpose of receiving interstate shipments of coal from its mine, although it has provided and maintains sidetrack connections for other mines in that district from which large quantities of coal are shipped to interstate destinations. Defendant controls, through ownership of capital stock, large coal mining enterprises in the Fairmont District which, during the year 1904, shipped more than one-half the tonnage from that district. Complainant has purchased the right of way for the sidetrack and the physical conditions pertaining to the proposed connection are at least as favorable as those pertaining to connections already made for other mines in that coal field. It is found generally that as between complainant's and the favored mines similarity of situation exists in essential respects. Under such discrimination complainant is unable to make interstate shipments of coal from its mine, and the defendant, by continuing its policy of denying these facilities to applying owners of coal lands, may practically control in its own interest all the undeveloped coal in this field, as well as derive greater profits from its large holdings in mines already developed in that section. *Held:* That the discrimination is not only wrongful as between complainant and other more favored shippers, but amounts to undue and unreasonable preference by defendant of itself, and that order forbidding further violation of section three of the statute should issue accordingly.

Wm. A. Glasgow, Jr., for complainant.
Hugh L. Bond, Jr., and *John G. Wilson* for defendant.

REPORT AND OPINION OF THE COMMISSION.

FIFER, *Commissioner:*

Complainant alleges, in substance, that defendant refuses to allow a sidetrack connection with its line which will enable complainant to equip its coal mine in West Virginia with sidetrack facilities and make shipments from such mine over defendant's railway to market points in other states; that in many instances and in essentially similar situations defendant has allowed such connection to other operators in the same coal territory, who, as a result thereof, are now enjoying sidetrack facilities and connections with and making interstate shipments of coal over defendant's road, and that by reason of the premises defendant is violating section 3 of the Act to regulate commerce. Defendant denies, generally, the alleged violation of

law, and particularly denies that this Commission has jurisdiction of the subject-matter of complaint. Facts relied upon by the respective parties are found as follows:

FINDINGS OF FACT.

Complainant is a corporation duly organized under the laws of West Virginia and is authorized to issue capital stock to the extent of $1,000,000. It was organized in December, 1904, and immediately thereafter purchased about 4,300 acres of land, 4,000 acres or more of which are underlaid with coal. The land is located a short distance northerly of the main line of the West Virginia & Pittsburg Railroad in Upshur County, West Virginia, and in what is known as the Fairmont District.

Defendant is a common carrier of interstate traffic and interested largely, not only in the transportation of coal, but also as a stockholder in several large coal companies, whose properties are located in the vicinity of defendant's lines of railway in the Fairmont District and elsewhere. It owns a majority of the capital stock of the Consolidation Coal Company, which in turn owns a majority of the capital stock of the Fairmont Coal Company. In a similar manner defendant is also interested in other coal companies, two or three of which operate in said district. Of approximately 6,000,000 tons of coal shipped from the Fairmont District during the year ending June 30, 1904, the Fairmont Coal Company shipped 3,601,481 tons. Defendant owns a majority or more of the capital stock of the West Virginia & Pittsburg Railroad Company, controls and operates that company's railroad as a part of defendant's system, and has authority to provide for and allow the connection asked for by complainant. For convenience the West Virginia & Pittsburg will be referred to hereinafter as though absolutely owned by defendant.

Soon after complainant made the purchase aforesaid it began to develop a coal mine on the land referred to and undertook to make arrangements for shipping coal therefrom to Philadelphia, Pa., and other points outside West Virginia. It opened two veins of coal, one of which is about 6 feet thick and the

other 4½ feet. The coal in the former vein is called Pittsburg and that in the latter Red Stone. It is of good quality and the same kind of coal taken out of other mines in the Fairmont District.

On January 19, 1905, Mr. Bullitt, who acted as special agent of complainant from that date until April 28, 1905, and has since been its president, applied to defendant's third vice-president for a sidetrack connection between complainant's coal mine and the main line of said West Virginia & Pittsburg Railroad and offered to comply with the terms of any conditions defendant might see fit to impose in that connection, but the application was declined. In explanation of this refusal defendant's officer said that defendant would never permit complainant to have a siding until forced to do so by law, and that if complainant succeeded the next man who applied would receive similar treatment; that the policy of defendant was, not to have a lot of little shippers on its line who would ship coal when prices were high and then shut up shop and go home and let the large shippers have the lean years, and that defendant proposed to protect its large shippers.

The coal land in question was formerly the property of the List Coal Company, who, as complainant knew, had unsuccessfully applied to defendant for sidetrack facilities. Notwithstanding this, and because it believed that defendant's position was untenable, complainant purchased the land and, after Mr. Bullitt's interview with defendant's third vice-president as aforesaid, continued the work of development. At the time of the hearing in this case it had expended some $15,000 or $20,000 in this connection and had adopted plans, the carrying out of which will necessitate the expenditure of $40,000 or $50,000 more. It has on hand the money to pay for the work and materials. It had made surveys and plans, located its tipple and the proposed sidetrack, nearly completed the foundation of and purchased materials for the tipple, purchased machinery and mining cars to be used at and in the mine, purchased ties and 70-pound rails to be used in constructing the sidetrack and 4) pound rails to be used in the mine, and completed the grading for the sidetrack over the entire distance from defendant's right

of way to complainant's tipple, except about 500 feet. It had also sold 100 tons of coal for the purpose of introducing it and showing its quality and agreed to deliver same in Philadelphia when it should procure sidetrack facilities, and had mined a small quantity of coal preparatory to complying with the terms of the contract.

Complainant's mine is favorably located and coal can be mined there at comparatively small cost. Mining cars can be run from the different openings to a central point and dumped into one set of screens, and the topography of the land there is such that it facilitates the construction of a tipple. When fully developed it is expected the mine will have a daily capacity of 2,500 tons. The length of the proposed sidetrack connecting the mine with defendant's main line is 3,980 feet.

The land purchased by complainant as aforesaid is not located immediately adjacent to defendant's right of way, but is separated therefrom by land formerly owned by other parties and what is known as the county road. By deeds dated respectively February 18 and 28, 1905, complainant secured title to a strip of the intervening land, running from complainant's coal land to defendant's right of way, sufficiently wide for said sidetrack, which is now being constructed thereon. It also procured from the proper authority a right to construct, operate and maintain the sidetrack upon and over the county road. The deeds referred to contain some reservations and agreements, such as the right of the grantors to enter upon the land to remove timber, etc., and the stipulation that the grantee shall construct and maintain grade crossings and cattle guards; but these matters will not interfere materially with the construction, use and maintenance of the sidetrack.

In the latter part of February or the first part of March, 1905, Mr. Bullitt, in pursuance of an appointment previously made with defendant's president, went to Baltimore to have an interview with him, and renew complainant's application for sidetrack facilities, but when he arrived there was told defendant's president was not certain he could see him that day and advised to state the object of his visit to defendant's first vice-president, which he did. The latter official gave Mr. Bullitt no encourage-

ment, but the reasons advanced for refusing to consider favorably complainant's application are not definitely stated in the record. At this interview Mr. Bullitt renewed complainant's offer to comply with such conditions as defendant might see fit to impose. On March 2, 1905, Mr. Bullitt appealed to complainant's president by letter and urged him to grant complainant's request, and on the 30th day of that month received the following reply:

"Mr. Logan M. Bullitt,
Dear Sir:

Your communication of March 2nd.

The present coal development on the road is to a considerable extent beyond the ability of the operators to market the product, or the railroad company to promptly and fully furnish transportation facilities to move it. Therefore, the company cannot reasonably encourage the expansion of this situation. The commercial obligation thus imposed prevents going beyond what is the company's strict duty under law in the matter. It is believed that you will appreciate the propriety of this position.

Yours very truly,
Oscar G. Murray."

Soon after the above communication was received by Mr. Bullitt, on April 29th, 1905, the complaint in this case was filed with the Commission. Previous to that time it will be seen that the reasons given by defendant for refusing to comply with complainant's request were: The over-development of coal mines, the inability of defendant to promptly and fully furnish transportation facilities to move the coal, and defendant's desire to keep small shippers out of the coal business and protect large shippers who are already in it. But at the hearing other matters were advanced by defendant in justification of its position, and in order that these may be clearly understood a brief description of the Fairmont District and the coal mines and lines of railway there located will be given.

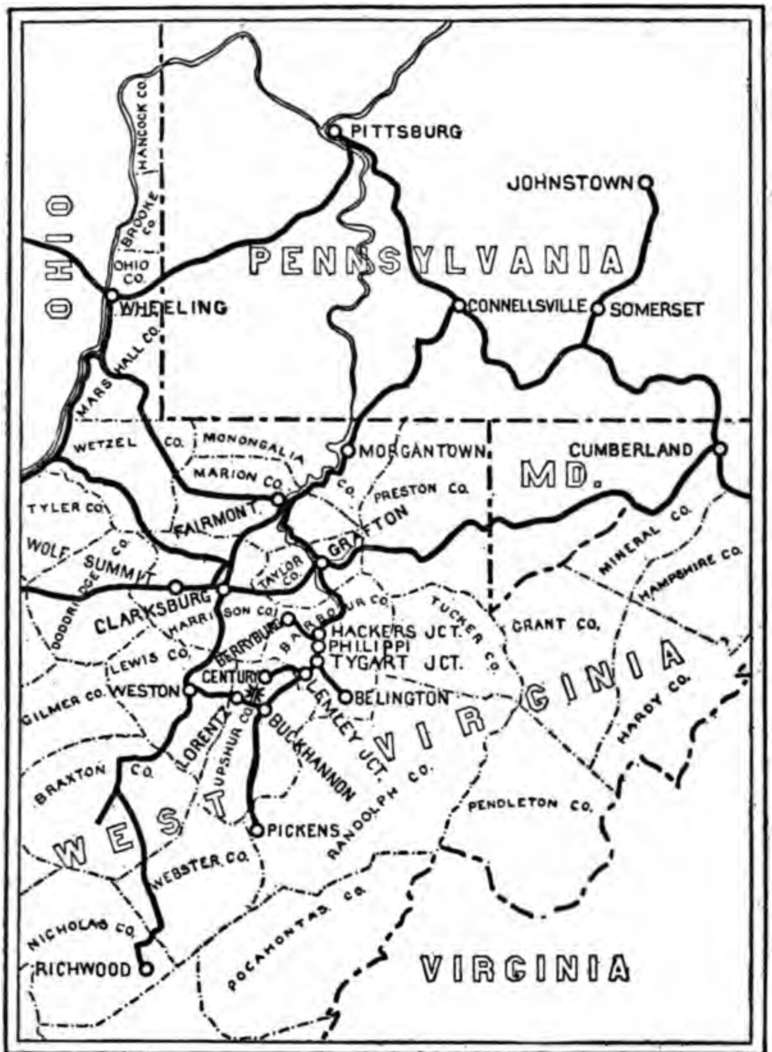
Defendant has a line which runs from Parkersburg through Clarksburg and Grafton, and this line is connected with the coal district in question by the following lines, all of which are

operated by defendant as a part of its system: The West Virginia & Pittsburg runs from Clarksburg in a southerly direction to Macpelah Junction, just north of Weston, and thence southeasterly through Lorentz to Buckhannon, a total distance of about 41 miles. At the latter point it connects with the Point Pleasant, Buckhannon & Tygart Valley Railroad, which runs thence in a northeasterly direction through Lemley Junction to Tygart Junction, a distance of 16.60 miles. What is known as the Burnersville branch of this road extends from Lemley Junction to Century, a distance of 5.09 miles. At Tygart Junction connection is made with the Grafton & Belington Railroad, which runs thence in a northerly direction through Philippi and Hackers Junction to Grafton, a distance of 29.6 miles. The main line of this road also reaches Belington, which is 11.7 miles southeasterly of Tygart Junction, and what is known as the Berryburg branch runs westerly from Hackers Junction to Berryburg, a distance of 4.66 miles. All the points mentioned in this paragraph are in West Virginia and the distances given, except from Clarksburg to Buckhannon, are taken from defendant's report to this Commission.

The lines between Buckhannon and Grafton were constructed by defendant or its subsidiary companies, particularly for the purpose of developing coal lands and securing coal traffic, but other traffic is now carried over them to some extent by defendant. It is indicated by defendant's reports to this Commission and Poor's Manual for the year 1904, and we find, that defendant owns either a majority or the entire capital stock of each of these lines and controls their policy and operations.

From Grafton defendant's line runs easterly to Cumberland, Md., and thence to Philadelphia and other eastern cities.

All the points described as located south of Clarksburg and Grafton are, we understand, in the Fairmont district, which is about 16 miles wide (from east to west) and 25 miles long. The following diagram, although not strictly accurate, shows fairly well the locations of the places and lines of railway described:


PITTSBURG
JOHNSTOWN
PENNSYLVANIA
OHIO
HANCOCK CO.
BROOKE CO.
OHIO CO.
WHEELING
MARSHALL CO.
CONNELLSVILLE
SOMERSET
WETZEL CO.
MONONGALIA CO.
MORGANTOWN
CUMBERLAND
MD.
MARION CO.
PRESTON CO.
TYLER CO.
FAIRMONT
GRAFTON
WOLF SUMMIT
DODDRIDGE CO.
TAYLOR CO.
MINERAL CO.
HAMPSHIRE CO.
CLARKSBURG
HARRISON CO.
BARBOUR CO.
TUCKER CO.
GRANT CO.
BERRYBURG
HACKERS JCT.
PHILIPPI
TYGART JCT.
LEWIS CO.
CENTURY
BELINGTON
GILMER CO.
WESTON
LORENTZ
UPSHUR CO.
BUCKHANNON
LEMLEY JCT.
WEST VIRGINIA
HARDY CO.
RANDOLPH CO.
BRAXTON CO.
PENDLETON CO.
PICKENS
WEBSTER CO.
POCAHONTAS CO.
NICHOLAS CO.
RICHWOOD
VIRGINIA

The distance from Lorantz to Buckhannon is 4 miles, and complainant's proposed sidetrack would intersect defendant's main line about midway between these two points, on a tangent about a mile long. From the point of intersection in an easterly direction about 1,000 feet the line is nearly level, while towards Lorentz the grade is only 3/10 of one per cent. On account of the heavy grades west and north of Lorentz it would not be practicable to haul complainant's coal over the West Virginia and Pittsburg Road to Clarksburg, but the grade in the opposite direction through Buckhannon and Tygart Junction is very favorable; it is said to be nearly a water grade.

At the hearing defendant advanced several matters in addition to those already stated, in justification of its refusal to comply with complainant's request, but they are practically all included in the additional expense to defendant which it is claimed will follow the making of such arrangements as will enable complainant to make interstate shipments of coal as aforesaid.

There are 88 coal operations in the Fairmont District, and these are connected with defendant's main line by sidetracks of various lengths, and by branches or spurs, such as the Burnersville and Berryburg branches above mentioned. In 7 instances, at least, the sidetracks are each 4,000 feet or more in length. Of course such connections could not have been made except by arrangements between the coal operators and the railroad company, but conditions imposed by the latter in that connection are not shown in the record.

A large number of these operations or coal mines are connected with defendant's main line between Buckhannon and Grafton, one at Century being nearer than any other to complainant's mine, the distance between the two being, in a straight line, only about 4½ miles. Mountainous conditions, however, would render it impracticable to connect Century by railroad with complainant's mine.

These coal mines are served by defendant by coal trains run to and from Grafton, the service for the Century mine being by way of Lemley Junction, and if the same service were extended to complainant's mine it would be necessary to run the trains

over the line from Lemley Junction to the proposed point of intersection between Buckhannon and Lorentz, a distance of about 14.5 miles. Defendant insists that the extra service would necessarily be to and from Century and that the additional expense to defendant would be from $800 to $1,000 a month, but we cannot agree with these contentions. Defendant operates daily in each direction by the proposed point of intersection three regular passenger trains and one regular freight train, and it would seem that coal cars might be attached to the latter when hauled in connection with complainant's shipments. However, whether or not defendant would be injured by additional expense incurred would depend upon whether or not it were fully compensated therefor by rates exacted for transporting complainant's coal, and the rate question is not involved in this proceeding.

During the last five years the output of West Virginia coal mines has a little more than doubled, and defendant showed that for the 14 months ending March 31, 1905, shipments from mines located on defendant's road in that state were somewhat less than ⅓ of the capacity of the mines, and claimed this indicated that defendant was able to furnish only such a proportion of the equipment required as the shipments bore to said capacity.

It is a matter of common knowledge that the enormous increase in tonnage offered for transportation during recent years has rendered it necessary for carriers to add largely to their equipment. This is especially true as applied to carriers of coal like that produced in the Fairmont District, that is, bituminous coal; and the shortage of cars occasioned by the strike in the anthracite coal region three or four years ago caused numerous complaints to be made by shippers concerning their inability to obtain cars in which to make shipments. Since that time, however, the equipment of the carriers has been increased largely, and the condition formerly prevailing has been very much improved. During the last five years defendant has increased the number of its coal cars 40 or 50 per cent. However, none of this increase was made in 1904, and from this we infer that defend-

ant did not at that time regard an increase as absolutely necessary.

The capacity of the mines was arrived at by taking all the working places in the mines and estimating the amount of coal which could be mined in a year if the working places were fully operated 300 days. This was done to assist in making an equitable distribution of cars. Of course no coal-mine operator expects to have in his service continuously a sufficient number of men to operate his mine to its full capacity; nor does he expect his mine will be operated 300 days in one year; his calculations are based upon 200 days.

Only a few of the sidetrack connections referred to have been made recently, and in addition to complainant's application some 15 or 20 applications for sidetrack facilities have been made by would-be shippers of coal and acted upon unfavorably to the applicants by defendant; but the circumstances surrounding such applications and refusals are not disclosed by the record.

The sidetrack facilities now enjoyed by coal operators as aforesaid were, aside from conditions imposed upon the applicants, concerning which very little has been disclosed, furnished in situations similar in essential respects to those pertaining to complainant's case. Where sidetrack connections were granted the mines in most instances may have been nearer to the other mines from which shipments are being forwarded and to defendant's main line and the sidetrack shorter than in the case under consideration. On the other hand, complainant's mine is in the same general coal field near other operations, the connection asked for is feasible, the transportation of coal from and supplies to the mine can be readily performed, and defendant has the right in fixing charges to consider its cost of transportation. As to the cost of constructing the sidetrack, defendant has required others to pay such cost and may impose a like condition in complainant's case.

If complainant cannot obtain the sidetrack connection it seeks it cannot make interstate shipments of coal from its coal mine; because, in order to make such shipments, it would have to haul the coal by wagon from the mine to Lorentz, the first regular sta-

tion west, a distance of $2\frac{3}{4}$ miles, and the expense of transportation by this method would be so great that complainant could not successfully compete with other shippers of coal from the Fairmont District who are now enjoying sidetrack connections as above explained.

Defendant's claim of justification, based upon the statement that its coal-carrying equipment is already overtaxed, would apply equally to any kind of traffic at a particular point. If its position is correct it may refuse to grant transportation facilities to any village or town which may hereafter be built adjacent to its line of railway.

Careful consideration of the evidence convinces us, and we find, that a chief reason why defendant declines to grant the connection which will result in complainant being equipped with sidetrack facilities, and thus enabled to make interstate shipments of coal over defendant's railway, is that it desires to protect coal companies in which it is interested against the competition of those who wish to make shipments of coal from coal mines which are as yet undeveloped and not provided with shipping facilities. Defendant's interest in coal companies, such as the Consolidation, the Somerset and the Fairmont is very large and the temptation to protect that interest is correspondly great. It owns more than $5,000,000 of the capital stock of the Consolidation Coal Company.

We further find that defendant's declination of complainant's application, under the circumstances disclosed by the record in this case, is unreasonable and unjust, and that by reason of the premises the defendant is subjecting complainant to undue and unreasonable prejudice and disadvantage and giving to other coal-mine operators who are operating coal-mines in the Fairmont District, and to itself, undue and unreasonable preference and advantage.

CONCLUSIONS.

This case must be decided under the first paragraph of section three of the Act to regulate commerce, which reads as follows:

"Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

In the second paragraph of section one of the act we find the following language: "The term 'railroad' as used in this act shall include . . . all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage."

It is shown by the facts that the defendant has provided side-track connections for numerous mine operations in the Fairmont coal district or field for the purpose of enabling the operators to ship coal from such mines to interstate destinations, and that this is a facility commonly used and recognized as necessary to the transportation of coal from the mines as interstate traffic.

The defendant, claiming in effect that this case amounts to an application for compulsory construction of an addition to or improvement of the road, contends that the subject matter of the complaint is not within our jurisdiction. If we lay to one side the claim of discrimination between shippers similarly situated, and regard the complaint as merely a demand for the construction of a switch connection at a particular point, it is undoubtedly true that we have no authority to grant relief. But we can not agree with that restricted view of the scope of this proceeding and thereby cast aside the real nature of the case which, as above stated, is discrimination in facilities for shipment and transportation. Before discussing the merits of complainant's claim or wrongful prejudice, however, it is important that the points pressed by defendant's counsel upon the question of jurisdiction should be examined.

Defendant further says that if the Commission can compel defendant to grant the connection asked for it can compel any common carrier engaged in interstate commerce to erect a depot

at any point on its line for the accommodation of passengers who may wish to travel therefrom to points in other states. Without saying anything concerning jurisdiction in a case like the latter, we call attention to the fact that passengers may travel by railroad from one state to another without using any depot at all. If defendant were transporting some passengers from one state to another and refusing to render similar service for other passengers a question very similar to the one now under consideration would be presented for determination.

A further illustration is found in cases relating to the provision of cars. This Commission has no jurisdiction to require a carrier to furnish cars for any purpose, but it has, and has frequently exercised, authority to prohibit carriers from wrongfully discriminating between shippers in furnishing cars for the transportation of interstate traffic. *Richmond Elevator Co.* v. *Pere Marquette R. Co.* 10 I. C. C. Rep. 629.

Counsel for defendant also insists that if the Commission can take jurisdiction here, it must prescribe the terms of a contract to be entered into between defendant and complainant covering the construction, maintenance and operation of the proposed sidetrack connection and the sidetrack itself. Here again it must be repeated that while we have no authority to prescribe the terms or conditions relating to the connection which defendant shall impose upon complainant, the jurisdiction of the Commission does extend to any case of unlawful preference in respect of transportation facilities and in such case an order may issue directing the carrier to cease and desist, but of course in its own way, from further continuing the unlawful discrimination. Such an order leaves the carrier free to discontinue the facilities in question to the favored shippers, if it can lawfully do so, or give such facilities to the complainant found to have been injured. As held in *Butchers' & D. S. Y. Co.* v. *Louisville & N. R. Co.* 14 C. C. A. 297, 31 U. S. App. 252, 67 Fed. 42, "it is clearly no defense to a charge of discrimination that the facilities furnished the favored person may be withdrawn at the will of the one who grants them." The fact that defendant has made the track connections for other mines and assist-

ed in the construction and perhaps the maintenance of the mine tracks, resulting in the development of valuable properties which would be rendered practically worthless by the discontinuance of these track connections, and which discontinuance the defendant might, under other laws, find it difficult to enforce, constitutes no bar to the application, upon complaint and sufficient testimony, of the undue preference clause of the Act to regulate commerce. Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations can not be justified by the fact of long-standing agreements with favored mine operators or other shippers.

Defendant having called attention to the fact that various State legislatures have assumed jurisdiction over sidetrack connections and that the validity of laws enacted by them in that respect has not been questioned, further contends that if the States have jurisdiction, then Congress has not. We have no doubt that the State of West Virginia has jurisdiction to enact that carriers of coal in that State shall provide track connections with all mines within its borders, and it is plain that enforcement of such a statute would permit shipments from the mines of interstate as well as state traffic. On the other hand it could not, as of course it would not, legislate that such connections should be made solely for interstate business, just as doubtless the Federal government would not legislate solely in the interest of state traffic, but would, if it legislated in that respect at all, legislate with reference to interstate shipments from mines in sections penetrated by the carriers' lines. In general terms Congress has enacted (in section three of the Act to regulate commerce), that the carriers of interstate commerce by railroad shall not subject persons, localities or descriptions of traffic to undue prejudice or unreasonable disadvantage, or give any undue or unreasonable preference or advantage to persons, localities or kinds of traffic in any respect whatsoever. This broad and comprehensive statutory provision is limited to discrimination, but it is not doubted that if Congress can make a law prohibiting partial treatment upon interstate shipments, it can also

legislate specifically in all ways in the exercise of its constitutional authority to regulate commerce among the States and with foreign nations.

The defendant places great reliance upon the case of *Wisconsin, M. & P. R. Co.* v. *Jacobson,* 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, where the Supreme Court held that "to provide at the place of intersection of these two railroads, at Hanley Falls, ample facilities by track connections for transferring any and all cars used in the regular business of the respective lines of road from the lines or tracks of one of said companies to those of the other, and to provide at such place of intersection equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of property and cars to and from their respective lines, as provided for by this judgment, would plainly afford facilities to interstate commerce, if there were any and would in no wise regulate such commerce within the meaning of the Constitution."

This decision in no sense denies the Federal authority over the same subject-matter in respect of interstate commerce, but does recognize the right of the State to legislate in respect of interchange connections while it does not attempt to regulate, though it may incidentally facilitate, interstate commerce. It is observed that the subject-matter regulated by the state in that case is covered also by the second paragraph of section three of the Act to regulate commerce, and that as to interstate traffic Congress has asserted its authority in respect of interchange facilities.

The defendant also, in support of its contention, as above outlined cited *United States* v. *E. C. Knight Co.,* 156 U. S. 1, 39 L. ed. 325, 15 Sup. Ct. Rep. 249, and *Hopkins* v. *United States,* 171 U. S. 578, 43 L. ed. 290, 19 Sup. Ct. Rep. 40, but those cases are relied upon to support the theory that the mining of coal is not interstate commerce, and no such question is involved in this case.

There are a few cases which seem to fully recognize the obligation of carriers under the Act to regulate commerce to refrain from undue preference in respect of switch connections for like

kinds of traffic. Thus in *Interstate Stock-Yards Co.* v. *Indianapolis Union R. Co.*, 99 Fed. 481, it is held: "It is clear, by force of the express terms of the interstate commerce act, that in respect of interstate commerce there can be no lawful discrimination to the advantage or disadvantage of any person, place, locality or kind of traffic. A common carrier of interstate freight cannot lawfully deny switch connections and service to one person, place, locality or kind of traffic which it affords to others similarly situated."

The case of the *Butchers' & D. S. Y. Co.*, v. *Louisville & N. R. Co.* 14 C. C. A. 290, 31 U. S. App. 252, 67 Fed. 35, decided by the circuit court of appeals under the common law, while holding that the question is one full of difficulty, and reserving that point for consideration in a future case, still appears to recognize the wrongful prejudice liable to result from refusal to furnish these sidetrack connections. In that case discrimination was claimed because switch connections were accorded to "dead freight" and refused to live stock, and this was held to be not unjust, the court saying: "We are clearly of the opinion that, however unjust and unlawful it may be for a railroad company having furnished a sidetrack to one shipper to refuse it to another similarly situated, the difference in this case between the business of the complainant and that of the other abutters upon the spur track is so great as to make the refusal of the railroad company to grant the sidetrack to the complainant entirely reasonable."

A case of discrimination in facilities arose under the nonpreference statute of Arkansas in *Harp* v. *Choctaw, O. & G. R. Co.*, 118 Fed. 169, where a shipper of coal desiring to continue loading by wagon at a station, was refused that privilege, and thereupon asserted unjust discrimination in favor of coal loaded on spur tracks from certain mines, some of the cars on such spur tracks having been loaded from wagons because the tipples about to be constructed had not been completed, and was decided against the complainant; but the court said (page 175) that carriers "may not arbitrarily, whimsically or capriciously, and without reasonable grounds, deny transportation simply because they have it in their power to do so; neither could they, under

like circumstances, make changes not in good faith as to what they will carry, where they will carry it to, or the means and methods to be employed." The circuit court of appeals, in affirming the judgment, said (61 C. C. A. 405, 125 Fed. 445) that a common carrier, "being a *quasi* public servant, must serve everybody who chooses to employ it, and must treat them impartially, charging each the same rate for substantially the same service, and affording to each the same facilities for shipment." Further on appears the ruling of the circuit court of appeals as follows: "The plaintiff had not provided himself with a spur track leading to his mine for the storage of cars, while other shippers had done so. He desired to make use of the defendant's sidetrack to stand cars thereon while he loaded them by the slow process of hauling coal to the station in wagons and shoveling it thence into the cars. The privilege which he demanded was essentially different from that accorded to other shippers who had built spur tracks on which cars could be placed and handled by the defendant with much less inconvenience and risk than when standing on its house tracks, which it used for handling other commodities and for switching purposes, and probably used at times for the passage of trains. We fail to see how the delivery of cars to other shippers of coal on spur tracks which they had caused to be built can be fairly said to have been a preference extended to them, or a discrimination against the plaintiff, who desired to use the defendant's house tracks. The privilege which the plaintiff demanded was not accorded to other shippers nor a substantially similar privilege. We think, therefore, that he has no just cause for complaint on this ground."

In our opinion the foregoing authorities fully warrant us in taking jurisdiction of the question in this case.

We do not think that every person or company desiring to develop a coal mine along or near defendant's road is entitled to demand a sidetrack connection merely because connections have previously been made with other mines. There must be such similarity of situation and feasibility of connection as will permit practical adherence to reasonable operating conditions by the carrier. We think similarity of situation in essential respects is shown by complainant in this case. Physical condi-

tions pertaining to the proposed connection are at least as favorable to defendant as those pertaining to the other connections referred to. Defendant says the hazard connected with the operation of its road will be greater with than it would be without the connection complainant seeks, but the same thing might be said concerning each of the sidetrack connections which have been made by defendant and its subsidiary companies. If the expense to defendant in connection with the transportation of complainant's coal will be greater than the expense connected with the transportation of coal from the coal mines of those who are now enjoying sidetrack connections, that is a matter defendant may properly consider when establishing the rates of transportation. If defendant has not provided sufficient equipment to meet all the requirements of its patrons, that fact does not furnish justification for a discrimination which would otherwise be unlawful. It may be that defendant could transport more coal to market if it could concentrate the shipping points and confine the business to large shippers, but this would furnish no excuse, under normal conditions, like the present, for refusing to use its facilities in a manner which will do justice to all.

As this case stands we must assume that complainant has complied with the terms of every condition which defendant might reasonably impose in the premises. Defendant makes no claim to the contrary, nor does it to any extent base its refusal upon noncompliance.

Finally, the position of the parties themselves deserves notice. Under the discrimination shown complainant is deprived of any opportunity to make interstate shipments of coal from its 4000 or more acres of coal land, and this property otherwise immensely valuable, becomes practically a barren waste; and if such discrimination is lawful, defendant will, by continuing to deny these facilities to applying owners of coal lands, be able to practically control in its own interest all the undeveloped coal in this field, as well as derive greater profit from its very large holdings in mines already developed in that section.

The circumstances in this case justify a conclusion that the discrimination is not only wrongful as between complainant and other more favored shippers, but amounts to undue and unrea-

sonable preference by defendant of itself, and that an order should issue, in accordance with the views herein expressed, forbidding further violation of section three of the Act to regulate commerce.

Commissioner Cockrell does not in any way participate in the decision of this case.

No. 816.

A. L. ARTZ
v.
SEABOARD AIR LINE RAILWAY.

Decided November 29, 1905.

Defendant's passenger fare from Fernandina, Fla., to Savannah, Ga., 124 miles, is $5.00, or about 4 cents per mile. A rate of 3 cents per mile is fixed by state authority for fares within the states of Florida and Georgia. Defendant's line between Savannah and Fernandina or Jacksonville is more expensive to maintain than other parts of its system. The freight traffic is light and the local passenger traffic insignificant. A reduction of this interstate passenger fare would not contribute to development of the section or increase materially the passenger business of the line. Reducing the fare to three cents per mile would render the earnings of this part of the system less than the average upon the whole system and less than the average of other roads in that part of the country.

***Held:* 1. That ordinarily the through interstate passenger fare should not exceed the sum of local fares, but there is no specific requirement in the regulating statute to that effect, and the only question for determination is whether the fare complained of is unreasonable. 2. That upon all the circumstances of the case the fare in question can not be deemed excessive and the complaint must be dismissed.**

A. L Artz for complainant in person.
Perkins Baxter for defendant.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

The first class passenger tariff of the defendant from Fernan-

dina, Florida, to Savannah, Georgia, is $5.00 and the complainant paid this sum for transportation between these two points; the distance being 124 miles. The local passenger rate of the defendant in both Georgia and Florida is 3 cents a mile and other passengers who traveled upon the same train with the defendant by purchasing a ticket from Fernandina to the Georgia state line and from there to Savannah made the trip for $3.92. The complainant insists that he was thereby compelled to pay an unreasonable fare and was subjected to undue discrimination.

The Seaboard Air Line operates lines of railway in Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. In all these states except Alabama its rates of passenger fare are fixed either by statute or a commission and are 3 cents per mile with the exception of North Carolina where they are 3¼ cents per mile. It seems that in some of these states exceptions are made in particular instances, either by the statute itself or by the commission. The general passenger agent of the defendant testified that such exceptions were made in numerous instances by the railroad commission of the state of Florida but that his company had never applied for any exception in its favor since the local business upon the lines in question was not sufficient to make the application of importance. It charged, therefore, in both those states in all cases the prescribed rate of 3 cents.

It also appeared that generally speaking the interstate rates of the defendant were not higher for the through transportation than the combined sum of the local state rates. Thus, beginning at Richmond and coming south towards Jacksonville the through passenger fare as far as Savannah was the same as the combination of locals, but the fare from Savannah to Jacksonville was $5.15, or substantially 3.73 cents a mile. The defendant justifies the charging of a higher rate upon this portion of its line than upon the rest of its system by the peculiar conditions both physical and traffic which exist there.

The country between Savannah and Jacksonville is low and swampy. Formerly it was covered with timber which has been entirely cut off to replace which nothing else has come in. No industries of any kind are located upon its line between these two points. Fernandina is a town of some 3,000 inhabi-

tants situated about 15 miles off the main line, the point of junction being Yulee. Between Fernandina and Savannah there are 15 stations of sufficient size to be named in the last census of the United States and the combined population, mostly colored, of all these according to that census is 1,046. The road was expensive to build and is, owing to the soft and marshy character of the soil, expensive to maintain, requiring frequent reconstruction by reason of the continual settling of the roadbed.

The defendant operates over this portion of its line during most of the year two passenger trains in each direction daily and during the winter an additional train. The general passenger agent of the defendant testified that, owing to tourist travel between the north and Florida points, the business of these trains during the winter months was good, but that during the remainder of the year it was extremely poor. He stated that the average earnings of one of these trains during the summer months was about 25 cents and of the other 60 cents per train mile.

The defendant was required to furnish from its books a statement showing in detail the earnings of these trains for the first week in January, June and September 1905. The figures do not bear out the testimony of the passenger agent of the defendant, but they do show a small business. The average earnings per train mile for the three weeks between Fernandina and Yulee was 57.5 cents. The corresponding average between Jacksonville and Savannah, during the same period, was 95.8 cents. The earnings were greater in January than in the other two months, for there were more trains, but not much greater per train mile. The figures above given are upon the present basis of rates. It is impossible to determine just what these earnings would be if no more than three cents per mile were charged in any case, but they would be materially reduced since almost the entire business is interstate.

The average passenger earnings of the entire Seaboard Air Line system for the year ending June 30, 1904, were 79 cents per train mile; the average for the whole United States in the same year were 114 cents, and for groups four and five, in which the defendant operates, 101 cents and 99 cents respectively. The gross earnings from operation of the defendant were $4,785

per mile and the cost of operation $3,482 per mile leaving a net income of $1,303 per mile.

Is the rate of $5.00 from Savannah to Fernandina unreasonable? In support of his contention that it is the complainant relies upon the fact that the local rate charged by the defendant in both the state of Georgia and the state of Florida is 3 cents per mile while this rate in question is nearly 4 cents per mile.

Ordinarily a through interstate passenger fare should not exceed the sum of the local state fares over the same route. If 3 cents per mile is a reasonable compensation for this defendant to charge for the transportation of a passenger from Savannah to Kingsland and from Yulee to Fernandina, 4 cents per mile is an unreasonable charge from Savannah to Fernandina. The fact that this defendant does, and certainly in Georgia, has for years acquiesced in the rate of 3 cents per mile is strong evidence that such rate is a just one, and it is only in what seems to be a clear case that we should hesitate to arrive at that conclusion from such evidence.

In this instance, however, strong reasons are urged in support of the present rate. Fernandina is located upon a branch of the main line between Savannah and Jacksonville 15 miles distant from Yulee, according to the testimony. The different tables given in the official guide are not exactly consistent in stating these distances, but a few miles are immaterial. From Yulee to Jacksonville is 24 miles. It cannot be said, therefore, that the rate of $5.00 to Fernandina is not in substantial accord with a rate of $5.15 from Savannah to Jacksonville. The question really is, May this defendant charge more than 3 cents per mile over the division of its line between Jacksonville and Savannah? It does not apparently charge in excess of the state rates upon most, if any, other parts of its system.

Here is a section of railroad in all about 140 miles long. It is by reason of the character of the soil over which it is constructed more expensive to maintain than most of the line of the defendant. The freight traffic which originates upon it is almost nothing and the through freight traffic light. Its local passenger traffic is insignificant, and the nature of the country is such

that a reduction of this rate would not apparently contribute to its development nor increase materially the passenger business upon this section of the defendant's line. Its passenger earnings per train mile between Yulee and Fernandina at the present rate are about one-half the average in that group; between Savannah and Yulee they are somewhat above the average of the defendant's system but less than the average of the group in which this section of railway lies. If reduced to 3 cents per mile the earnings of this piece of road would be less than the average upon the defendant's system and materially less than the average of other roads in that section.

While we reach the conclusion with some reluctance, for it sanctions a condition which ought not to exist, we feel on the whole that this rate cannot be pronounced excessive.

The reasonableness of the passenger fare upon a particular part of the defendant's system must be determined with some reference to the system as a whole. It should not be allowed to select a few miles of road and separate them entirely from the rest, but we think it may properly treat this section between Savannah and Jacksonville as it has, especially in view of the fact that the passenger earnings of the defendant's entire system are extremely low, considerably lower than the average in the two groups in which it operates, and that its net income from operation is small, also much below the average in those groups.

Conclusions.

While under ordinary circumstances the through interstate passenger fare should not exceed the sum of the local fares there is no requirement of the Act to regulate commerce to this effect and the Commission has twice sustained a through rate higher than the sum of the locals prescribed by statute in the adjacent states. *Railroad & Warehouse Commissioners* v. *Eureka Springs Railway Company*, 7 I. C. C. 69; *Savannah Bureau of Freight & Transportation* v. *Charleston & Savannah Railway Company*, 7 I. C. C. 601. The only question which we have to determine is whether the interstate rate is unreasonable, and in this case it has been found that it is not. The complaint

of Mr. Artz who paid $5.00 for his transportation from Fernandina to Savannah while other passengers in the same car paid $1.08 less, was a natural one which would ordinarily have been well founded, but under the peculiar circumstances of this case it cannot be sustained. Complaint dismissed.

No. 813.

R. C. BRABHAM *et al.*
v.
THE ATLANTIC COAST LINE RAILROAD COMPANY and THE CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY.

Decided December 7, 1905.

Defendants charge for passenger fare from Ellenton, S. C. to **Augusta, Ga., 22 miles**, is 80 cents, and from Jackson, S. C., to **Augusta, 15 miles**, 60 cents, and these fares are alleged to be unreasonable. The local passenger fares in South Carolina and Georgia are controlled by a maximum of three cents per mile fixed by state authority. The distance covered between the points mentioned is via the C. & W. C. Ry., the other defendant, the A. C. L. R. Co. having certain trackage rights over part of the other line. All fares collected by the A. C. L. R. Co. for transportation between Ellenton or Jackson and Augusta are turned over to the C. & W. C. Ry. Co. The financial condition of the C. & W. C. Ry. Co. is poor. The country along the line of this road, though long settled, is sparsely inhabited and the traffic is light. *Held:*

1. That the rates fixed by the State Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic.

2. That a railroad company is entitled to a fair return upon the value of that which it employs for the public convenience, and that in view of all the facts in this case, and previous decisions of the Commission cited, it is not apparent that the interstate passenger rates complained of are unreasonable.

D. S. Henderson and *J. S. Reynolds* for complainants.
Ed Baxter, J. R. Lamar, and *Perkins Baxter* for defendants.

Report and Opinion of the Commission.

Cockrell, *Commissioner:*

By the laws of South Carolina and of Georgia, three cents per mile for passenger fare is the maximum allowed. The defendants charge complainants for passenger fare from Ellenton, in South Carolina, to Augusta, Georgia, 22 miles, 80 cents fare; and from Jackson, South Carolina, to Augusta, 15 miles, 60 cents fare; and the issue is whether such charges are just and reasonable or unjust and unreasonable.

A full hearing was had at Augusta, at which testimony and statistics were presented. From the testimony presented and the reports of the railroad commissions of South Carolina and Georgia, and the reports made to this Commission, we find the following facts:

The defendant, C. & W. C. Railway Company, owns and operates a railroad from Port Royal, in South Carolina, to Augusta, Georgia, and from Augusta, Georgia, to Spartanburg, South Carolina, with branches to Anderson and Greenville, total distance 341.18 miles, 22.07 miles being in Georgia; and the defendant, the Atlantic Coast Line Railroad Company, does not own any part of said line but has trackage rights from its co-defendant, from Robbins, S. C., its junction point, to Augusta, Ga., for the purpose of handling passengers coming from and going to points north of Robbins and Augusta and beyond, and from points between Robbins and Augusta when destined to points beyond, but not between Ellenton and Jackson, S. C., to Augusta; and when passengers get on its trains at Ellenton or Jackson for Augusta the conductor, rather than put them off, accepts the fare and pays it over to its co-defendant.

The C. & W. C. road and equipment, according to the report of the Railroad Commission of South Carolina for 1904, cost $6,410,527.19, being $18,789.25 per mile. Its capital stock is $1,200,000.00, its first mortgage bonds $2,720,000.00 at 5%, income bonds $2,380,000.00, equipment trust obligations $600,000.00, 6%; total stock and bonds $6,900,000.00, or $20,223 per mile.

The country along the line of the road between Port Royal and Augusta is generally rather low and swampy, and some miles back from the road is good cotton land and better agriculturally than near the line of the road; population, 75% colored, 25% white. Of the 74 local stations only 18 are incorporated, and the average population is only 290. The industries on the line between Ellenton and Jackson, S. C., and Augusta embrace one oil mill at Cathwood, which has not been operated for about two years, and one small lumber sawmill at Hart's Spur. There are no large promising towns, and the products of cotton, hay and gravel show little increase, while in lumber there is a decrease. The country along the road from Augusta to Spartanburg is hilly and ordinary farming land.

This road has 543 curves, the aggregate length of the curved lines being 91.12 miles, of the straight lines 248.46 miles, of the level lines 36.60; 262 ascending grades of the aggregate of 164.98 miles; 253 descending grades of the aggregate length of 137.99; maximum grade between Port Royal and Augusta 54 feet per mile, and between Augusta and Spartanburg 100 feet per mile, Anderson branch 80 feet per mile, Greenville branch 80 feet per mile.

Number of bridges, 12 iron or steel, aggregate length 3727.5 feet, maximum 731 feet, minimum 44 feet; 2 wooden bridges each 80 feet long; 1 combination bridge 108 feet long; 347 trestles, aggregate length 35,744 feet, maximum 2,232 feet, minimum 6 feet.

Number of loaded freight cars per train between Port Royal and Augusta, 25; between Augusta and Spartanburg, 15; over the Anderson branch, 11; over the Greenville branch, 15. Other lines in that section handle from 35 to 50 loaded freight cars per train.

Statement Compiled from the Annual Reports of the Charleston & Western Carolina Railway Company, Showing Tonnage for the Years Named, Ending June, 30.

Year	Tons carried	Tons carried 1 mile	Average amount received for each ton of freight	Average Receipts per ton per mile ¢
1900	545,266	39,801,984	$1.15.014	1.575
1901	561,625	41,871,997	1.20.231	1.613
1902	588,697	44,063,041	1.17.171	1.565
1903	706,936	56,198,393	1.20.309	1.513
1904	706,320	53,526,839	1.21.559	1.604
1905	829,012	60,672,525	1.12.859	1.542

The following is the tonnage, in detail, for 1905:

Originating on the Road.		Received from Connections.	
Lumber	59,187	Fertilizer	84,689
Stone, sand and other like articles	55,114	Coal	64,294
Merchandise	45,002	Grain	31,337
Wood	39,753	Phosphate rock	27,709
Fertilizers	39,427	Lumber	25,426
Cotton	37,778	Cement, brick and lime	24,661
Cement, brick and lime	33,452	Cotton	23,060
Cotton seed and hulls	23,707	Flour	21,241
No other products amounting to 8,000 tons.		Other mill products	12,354
		Hay	10,516
		Fruits and vegetables	12,318
		No other product amounting to 10,000 tons.	

Statement Compiled from the Annual Reports of the Charleston & Western Carolina Railway Company for the Years Named, Ending June, 30.

Year	Passengers carried	Passengers carried 1 mile	Average amount received from each passenger, cents	Average Receipts per passenger per mile cents
1900	223,954	6,762,946	69.990	2.318
1901	229,367	7,004,587	71.749	2.349
1902	213,954	6,052,223	72.754	2.572
1903	251,731	7,107,450	67.777	2.401
1904	254,336	7,040,700	71.409	2.580
1905	275,346	7,590,014	70.735	2.566

The report of the Railroad Commission of South Carolina for 1904 gives statistics relating to income and expenditures on the lines in South Carolina alone, as follows:

Year	Total Income	Total Expenses	Net Income
1900	$ 897,183.17	$702,893.72	$194,289.45
1901	900,221.67	716,841.16	183,380.51
1902	897,696.89	706,074.09	197,372.31
1903	1,035,508.66	901,774.48	133,734.18
1904	1,082,066.71	890,532.86	197,252.89

Year	Income per Mile	Expenses per Mile	Net Income per Mile
1900	$2,811.40	$2,202.66	$567.44
1901	2,813.28	2,123.53	679.75
1902	2,557.80	2,077.25	581.00
1903	3,244.98	2,690.53	554.44
1904	3,390.89	2,655.30	735.59

In these tables, under head of "Expenses" taxes are included, but the interest payments of $136,000 on the first mortgage bonds, and $36,000 on the terminal bonds, are not included.

The report of the Railroad Commission of the State of Georgia gives the following data for the year 1904:

C. & W. C. in Georgia.

Gross earnings	$75,330.84
Operating expenses	58,905.49
Net earnings	16,425.35
Gross earnings per mile	3,413.27
Operating expenses per mile	2,669.03
Net earnings per mile	744.24
Percentage of operating expenses to gross earnings	78.20

All Railroads in Georgia.

Average gross earnings, per mile	$4,989.77
Average operating expenses, per mile	3,534.31
Average net earnings, per mile	1,140.50
Percentage of operating expenses to gross earnings	70.83

The following statistics relating to income and expenses are taken from the annual reports of the Charleston & Western Carolina Railway Company to this Commission:

Year	Gross Earnings	Operating Expenses	Net Earnings
1900	$ 893,945.93	$660,893.72	$233,052.21
1901	963,296.68	730,543.66	232,753.02
1902	963,760.20	711,238.30	252,521.90
1903	1,111,060.79	921,217.25	189,843.54
1904	1,157,397.55	906,238.35	251,159.20
1905	1,250,920.21	972,029.10	278,891.11

Year	Gross Earnings per mile.	Operating Expenses per mile.	Net Earnings per mile.
1900	$2,610.75	$1,930.12	$680.63
1901	2,813.28	2,133.53	679.75
1902	2,814.64	2,077.16	737.48
1903	3,244.83	2,690.39	554.44
1904	3,392.33	2,656.18	736.15
1905	3,666.45	2,849.02	817.43

Percentage of operating expenses to earnings, 78.30 for 1904, and 77.71 for 1905.

From the net earnings in above tables, no deduction is made for interest paid on first mortgage bonds, $136,000, and on equipment trust obligations, $36,000.

Operating Expenses.

	1904	1905
Maintenance of ways and structures, total	$290,159.93	$341,796.59
Maintenance of equipment	162,999.82	154,755.08
Conducting transportation	425,858.35	447,458.34
General expenses	27,220.25	28,019.09
Total	$906,238.35	$972,029.10
Percentage of operating expenses to earnings	78.30	77.71

Employees and Salaries.

	1904.		1905.	
	No. of Employees.	Yearly Pay.	No. of Employees.	Yearly Pay.
All officers and laborers	1078	$360,383.08	909	$400,372.32
Distributed as follows:				
General administration	48	35,369.88	30	28,559.88
Maintenance of ways and structures	455	84,975.72	345	107,201.68
Maintenance of equipment	188	78,940.80	178	83,743.28
Conducting transportation	387	160,996.68	356	180,867.48

The road is in good condition and repair.

STATEMENT COMPILED FROM THE ANNUAL REPORTS OF THE CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY TO THE INTERSTATE COMMERCE COMMISSION FOR THE YEARS ENDING JUNE 30, 1900, 1901, 1902, 1903, 1904 and 1905.

ITEM.	1900.	1901.	1902.	1903.	1904.	1905.
Mileage operated....(Miles)	342.41	342.41	342.41	342.41	341.18	341.18
Gross earnings	$893,945.93	$963,296.68	$968,760.20	$1,111,060.79	$1,157,397.55	$1,250,920.21
Operating expenses	660,893.72	730,543.66	711,238.30	921,217.25	906,238.35	972,029.10
Income from operation	233,052.21	232,753.02	252,521.90	189,843.54	251,159.20	278,891.11
Income from other sources	3,237.24	2,474.41	4,181.10	25,562.99	14,402.47	13,565.56
Total income	236,289.45	235,227.43	256,703.00	215,406.53	265,561.67	292,456.67
Total deductions from income	214,000.00	225,605.34	217,929.81	215,200.00	216,068.38	265,656.04
Net income	22,289.45	9,622.09	38,773.19	206.53	49,493.29	26,800.63
Dividends	----------	----------	----------	----------	----------	----------
Surplus from operations of year	22,289.45	9,622.09	38,773.19	206.53	49,493.29	26,800.63
Balance sheet surplus of previous year	----------	----------	----------	232.15	----------	51,829.12
Balance sheet deficit of previous year	47,809.77	30,163.13	20,541.04	----------	196.77	----------
	25,520.32	20,541.04	18,232.15	438.68	49,296.52	78,629.75
Additions for year	----------	----------	----------	.52	2,919.24	456.20
Deductions for year	4,642.81	----------	18,000.00	635.97	386.64	386.83
	4,642.81	----------	18,000.00	635.45	2,532.60	69.37
Surplus for general balance sheet	----------	----------	232.15	----------	51,829.12	78,699.12
Deficit for general balance sheet	30,163.13	20,541.04	----------	196.77	----------	----------

In the "Total deductions from income" for each year, Taxes and Interest $136,000 on First Mortgage Bonds, and $36,000 on Augusta Terminal Bonds, are included; and for the year 1904, interest $47,600, being 2 per cent. on $2,880,000 Income Bonds, is also included.

Prior to April 20, 1900, first class passenger fare from Port Royal to Augusta was $4.00—3.57 cents per mile; Ellenton to Augusta 22 miles, 85 cents—3.96 cents per mile; Jackson to Augusta 15 miles, 65 cents—4.3 cents per mile; between points in South Carolina 3.5 cents per mile, second class 3 cents per mile; between points in Georgia 3 cents per mile. March 9, 1896, the legislature of South Carolina by law fixed first class passenger fare at 3.25 cents, second class 2.75 cents, per mile, except where otherwise provided by the South Carolina Railroad Commission. That Commission in 1897 authorized the C. & W. C. Railway to charge 3.5 cents for first class and 3 cents for second class.

The legislature of South Carolina by act of February 19, 1900, fixed passenger rates for all roads in South Carolina at 3 cents per mile. On April 20, 1900, this road reduced its rates from Port Royal to Augusta from $4.00 to $3.50—3.12 cents per mile; from Ellenton to Augusta from 85 to 80 cents—3-7/11 cents per mile; and from Jackson to Augusta from 65 to 60 cents—4 cents per mile; and has for sale at Ellenton and Jackson and all other stations within 40 miles of Augusta what is called family 30-single trip commutation tickets at 2.25 cents per mile. Tickets for 1000 miles are also sold at 2.5 cents per mile.

The C. & W. C. Railway operates one passenger train daily each way and one mixed passenger and freight train daily each way. In 1904 tickets sold at Ellenton for Augusta numbered 784, amounting to $638.99; at Augusta for Ellenton 974 amounting to $682.95, being 2½ passengers per train or 5 per day. Tickets sold at Jackson for Augusta numbered 496, amounting to $310.20; at Augusta for Jackson 419, amounting to $243.65, being 1¼ passengers per train, or 2½ per day. These figures do not include the family 30-single trip commutation tickets, the 1000-mile tickets, or the cash fares, paid on the trains.

On all interstate passenger fares, to and from Augusta, Ga., about 15 cents are added to the rates prescribed by South Carolina and Georgia, the interstate rates being about 15 cents higher than the State rates; and when the 1000-mile tickets

are used on interstate travel 5 miles more than the actual distance is deducted to secure such 15-cent higher rate. This higher interstate rate is also charged by the Atlantic Coast Line to and including Barnwell, 49 miles from Augusta; but it publishes no rates from Augusta to Robbins, where its trains go on its own track.

Mr. Ernest Williams, General Freight and Passenger Agent of this road, testified that the rates complained of "were reasonable on account of the small amount of business moving between these points, the cost of the lines, cost of operation, the amount of money invested, and the poor country through which that part of the line runs."

The Company has regularly paid the 5% interest on the $2,720,000 first mortgage bonds and the 6% interest on the $600,000 Augusta Terminal Railway obligations. On $2,380,000 income bonds no interest was paid until in December, 1904, when $47,600, being 2%, were paid. No dividend has ever been paid on the $1,200,000 stock.

As shown in the "Statement Compiled from the Annual Reports" to this Commission for the years 1900–1905, inclusive, there were deficits of $47,809.77 for 1899, $30,163.13 for 1900, $20,541.04 for 1901, and $196.77 for 1903; and a net surplus of $232.15 for 1902, $51,829.12 for 1904, and $78,699.12 for 1905.

There is no evidence tending to show mismanagement or unreasonable charges in salaries or other expenditures, or that this road has bonded its property for an amount that exceeds its fair value, or that its capitalization is largely fictitious.

CONCLUSIONS.

While "The presumption is that the rates fixed by the State Commissions of South Carolina and Georgia are reasonable, and the burden of proof is upon the railroad companies to show the contrary," yet that presumption is not conclusive, when the contrary is shown to this Commission on interstate traffic.

"What the Company is entitled to ask is a fair return upon the value of that which it employs for the public convenience." 11 I. C. C. REP.

The bonds alone amount to $16,706.72 per mile; while bonds and stocks amount to $20,223 per mile.

The country traversed by the road has long been settled. The roads were in the hands of receiver in 1896. In 1899 there was a deficit in revenue after paying interest on first mortgage and terminal bonds, and this deficit continued for several years. The first net surplus, excepting $232.15 in 1902, was $51,829.12 in 1904, which was increased to $78,699.12 in 1905, from which, if 3% were paid on the income bonds, only $7,299.12 would be left to be carried to the balance sheet surplus for 1906.

In view of all the facts in this case and the decisions of this Commission in *Railroad & W. Comrs.* v. *Eureka Springs R. Co.* 7 I. C. C. Rep. 69; *Savannah Bureau of Freight & Transportation* v. *Charleston & S. R. Co.* 7 I. C. C. Rep. 601; and *A. L. Artz* v. *Seaboard Air Line Company*, decided very recently (*ante*, 458), we do not feel justified in deciding that, at this date, the interstate rate complained of is unreasonable. It is to be hoped that the earnings of this road may continue to increase and that at no distant day the road will feel justified in conforming its interstate rates to the local rates prescribed in South Carolina and Georgia, and thus avoid contention and strife on the part of its patrons.

The complaint is dismissed.

No. 739.

THE DEWEY BROTHERS COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; and ATLANTIC COAST LINE RAILROAD COMPANY.

Decided December 15, 1905.

1. Upon two carloads of hay shipped about May 8, 1902, from Pataskala, O., one to Wilmington, N. C., and the other to Greenville, N. C., it appears that the Wilmington shipment was overcharged 1 cent per 100 pounds, and that on the Greenville shipment the rate under published tariffs should have been 30 cents per 100 pounds, instead of a higher rate claimed for the defense to have been 30-½ cents and by the complainant to have been 36 cents, the proof not indicating definitely what was actually charged. *Held:* That the findings show a basis for adjustment and refund which should be made, and that the case be held open for further proof and order if that course should become necessary.

2. The circumstances and conditions governing hay traffic from Columbus and Pataskala, O., appear to have been substantially dissimilar at a time when a lower rate from Columbus than from Pataskala to Greenville and Wilmington was in force, and complainant's demand for reparation based upon the rate then in force from Columbus is not sustained.

L. W. Dewey for complainant.
F. A. Durban for Baltimore & Ohio Railroad Company.
John Galvin for Chesapeake & Ohio Railway Company.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The complaint alleges that complainant is a corporation under

the laws of Ohio with its principal office at Blanchester, and one branch of its business is buying hay at various points in the State and shipping in carload lots by rail to North Carolina and other States; that defendants are common carriers, subject to the Act to regulate commerce; that about May 8, 1902, Dewey Brothers, then a partnership concern, shipped two cars of hay, of 20,000 pounds each, from Pataskala, Ohio, one to Wilmington, N. C., and the other to Greenville, N. C., the published rates being 17 and 25 cents per hundred pounds from Columbus, Ohio, to said points, respectively; that Pataskala is an intermediate point in each instance and should take the Columbus rate, but the rate to Wilmington exacted was 23 cents per 100 pounds, or $46, and to Greenville, 36 cents. Unreasonable rates, unjust discrimination and undue prejudice were alleged and reparation was asked for.

The Chesapeake & Ohio Railway Company, answering, avers that no record can be found of its participation in the above shipments, denies it is an initial carrier from Columbus points, avers the circumstances and conditions of Pataskala shipments are not substantially similar with those from Columbus, and denies any violation of sections one, two, three, or any part of said Act to regulate commerce.

The Atlantic Coast Line, answering, avers its proportionals of through shipments are fixed, are the same from Columbus or Pataskala, and are just and reasonable.

The Baltimore & Ohio Railroad Company, answering, avers that the complaint is fatally defective in omitting an allegation of "substantially similar circumstances and conditions;" that the said rate on combination between Pataskala and Wilmington was 8 cents from Richmond to point of delivery, 9 cents from Columbus to Richmond, and from Pataskala the local rate to Columbus of 5 cents per hundred pounds, or 22 cents; that if 23 cents was exacted it was an overcharge of 1 cent per 100 pounds, which defendant stands ready to refund; that from Pataskala to Greenville the rate was 5 cents to Columbus, thence 9½ cents to Richmond, Richmond to Greenville 16 cents, a total of 30½ cents per 100 pounds, and that this rate is just and reasonable. It denies the payment of 36 cents as charged by complainant.

Complainant is an incorporated company under the laws of Ohio with a principal office at Blanchester, Clinton County, Ohio. The shipments complained of were made by Dewey Brothers, then a partnership, succeeded by the Dewey Brothers Company, the corporation which took over the partnership assets and thus became owner of this claim. Pataskala, Ohio, is a small station of less than 1,000 population, on the Baltimore & Ohio Railroad, 17.5 miles to the east of Columbus and intermediate in the customary route from Columbus to Richmond and beyond.

About May 8, 1902, as shown by waybill of that date, Dewey Brothers shipped to Wilmington, North Carolina, from Pataskala, Ohio, by the Baltimore & Ohio Railroad, car 21642, with 20,000 pounds of baled hay, with blue pencil correction to 18,000, on which waybill is shown the charge of 15 cents to Richmond and 8 cents from Richmond to Wilmington, or a total through rate of 23 cents per 100 pounds.

As shown by the tariff sheets on file in the office of the Commission, as set forth in the answer of the initial defendant, the changes in rates were as follows:

By a Baltimore & Ohio Joint Freight Tariff I. C. C. 3172, the rate under which these shipments were made was 9 cents from Columbus to Virginia Cities, when destined beyond. This was canceled by I. C. C. 3614, May 30, 1902, when the rate was made 9½ cents to Virginia Cities, with a note excepting shipments destined for Wilmington, and on April 24, 1903, I. C. C. 5122 canceled the proportional rate and the rate from Columbus and intermediate stations became 20 cents to Virginia Cities, whether proper or destined beyond.

The copy of waybill submitted in evidence shows a charge to Richmond of 15 cents per 100 pounds and 8 cents thence to Wilmington, a total through rate of 23 cents. The regularly published rate on date of shipment from Columbus and other stations on the Baltimore & Ohio Railroad was 20 cents per 100 pounds on fifth class, which included hay, straight through to Richmond and the other Virginia Cities, but by the Special Joint Freight Tariff I. C. C. 3172, a rate was made on Columbus only, as shown, of 9 cents to Virginia Cities, when destined

beyond. This did not apply to Pataskala whose published rate was still 20 cents, but the combination of its local of 5 cents to Columbus and the Columbus rate of 9 cents to Richmond, making 14 cents to that point when destined beyond, was a lower combination, which was applied and secured a rate 6 cents below the rate which had been in force from that point, viz.: 20 cents per 100 pounds to Richmond, which rate is again now in force, since the withdrawal of the competitive rate at Columbus.

The waybill submitted in evidence shows a charge of 15 cents per 100 pounds on the Wilmington shipment to Richmond, though the combination of the local from Pataskala to Columbus with the through rate to Richmond is but 14 cents; and the freight bill from point of delivery shows payment of $46 instead of $44, an overcharge of 1 cent per hundred pounds, as admitted in the pleadings and at the hearing by the initial defendant. In the shipment to Greenville there seem to be some discrepancies in the amounts stated of the total charge. The rate from Pataskala upon that date, May 8, was the same in combination to Richmond as set forth in the answer for the other shipment to Wilmington; that is, 9 cents per 100 pounds from Columbus, with the local of 5 cents added from Pataskala to Columbus. Thus 14 cents to Richmond and 16 cents per 100 pounds beyond to Greenville would give a rate of 30 cents per 100 pounds, the lowest combination, which under their rates the carriers had applied to Wilmington and should have applied as well to Greenville. It was contended, however, by the defendants in the answer, appeared upon what is apparently a copy of manifest by the road and repeated by counsel for defendants, that the rate charged was the 5-cent local to Columbus, 9½ cents thence to Richmond and 16 cents beyond, making a total rate of 30½ cents. For this rate there is no warrant; the rate of 9½ cents to Virginia Cities did not become effective until May 30, and this shipment was made as stated on May 8.

The complainant, on the other hand, contended that it was charged a rate of 36 cents, or 20 cents from Pataskala to Richmond and 16 cents thence to Greenville. This could easily have occurred; the rate had been 20 cents per 100 pounds from these points to Virginia Cities, and when the 9-cent rate was

put in, a notation on the back of the rate sheet instructed the agents and the public that the 20-cent rate still applied to many points through Virginia gateways. It reads as follows:

"Application of Rates."

"Class rates governed by the Official Classification as per I. C. C. No. 1932, or subsequent issues must be used to Lynchburg, Norfolk, Portsmouth and Richmond in making through rates destined to Beaufort, S. C., Charleston, S. C., Jacksonville, Fla., Savannah, Ga., or points located on the following lines." (Naming a dozen or more local roads.) Under these instructions together with the fact that the 20-cent rate had been before in effect, it is easy to understand how an agent could have charged and collected a rate of 20 cents to Richmond and 16 cents beyond, or 36 cents, the amount complainant alleges it was obliged to pay.

The lowest combination published on the date of shipment was 30 cents for the through rate to Greenville and if 36 cents was charged and collected on this car, it was clearly an overcharge of 6 cents per 100 pounds, for which the carriers are liable.

The defendants denied the collection of any higher rate than 30½ cents, and there was no positive evidence offered at the hearing of the payment of 36 cents per 100 pounds. The payment had not been made by complainant but by its consignee, as was alleged, and no receipt from the carriers or other evidence of actual payment by the consignee was placed in evidence. There was no evidence to support the contention that the published rate was unreasonable from either Pataskala or Columbus, and the rates are now the same from both points to Richmond when destined beyond, 20 cents per 100 pounds, or 6 cents higher than at date of shipment. That the rate from Pataskala to Richmond should be 14 cents, while the rate from Columbus was but 9 cents per 100 pounds, is the basis of the claim of discrimination to which attention is called. The number of roads centering at Columbus, and the initial reduction by a rival line at that point, the Norfolk & Western, of the rate

on hay to 9½ cents per 100 pounds to the Virginia Cities when destined beyond, make such a competitive condition at that point as under the rulings of the Supreme Court, circumstances and conditions not being substantially similar, creates a situation which does not necessarily demand like rates.

Upon the shipment of hay from Pataskala, Ohio, to Wilmington, N. C., car 21642, 20,000 pounds, there was clearly an overcharge of 1 cent per 100 pounds, which defendants in the answer and by counsel professed willingness to adjust. Upon the shipment from Pataskala, Ohio, to Greenville, N. C., the published rate in effect was 30 cents, and all above that rate was an overcharge, which should be refunded. The defendants claimed that the rate charged was 30½ cents, which would be ½ cent overcharge, but complainant contended 36 cents had been paid, an overcharge of 6 cents per 100 pounds.

An order might be entered at this time for the refunding of this overcharge if the evidence of the payment of 36 cents was clear. The complainant did not claim to have paid the 36-cent rate to Greenville, but testified the payment was made by "the consignee; I do not remember who it was in this instance." The freight receipt, or the statement of the consignee, or any direct evidence of the payment of the $72 instead of $60 upon this car would have warranted the issuance of an order.

The above findings and conclusions clearly indicate a basis for an adjustment of the claim between the parties in interest which will no doubt result in a prompt and amicable disposition of the matters in dispute. The case will therefore be left open for this purpose, and on the failure of the carriers to adjust the claims along the lines above indicated, a further hearing will be fixed for admission of the necessary evidence of the payment of the overcharge, and upon such proof an order to refund the same will be entered.

11 I. C. C. Rep.

No. 740.

DEWEY BROTHERS COMPANY

v.

BALTIMORE & OHIO RAILROAD COMPANY; CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY; SOUTHERN RAILWAY COMPANY; and CAROLINA & NORTHWESTERN RAILWAY COMPANY.

Decided December 15, 1905.

Complainant shipped a carload of hay from Summit, O., to Lenoir, N. C. Complainant claims that shipping instructions were given to route the car via "Strasburg Junction and Southern Railway." The defendant initial carrier denies this and asserts that instructions were given to route via "Cincinnati and Southern Railway," the route actually used. The rate was less via Strasburg than via Cincinnati. The complainant was unable to prove definitely the giving of instructions to route via Strasburg, but complainant and defendant both agree that shipping instructions were given. *Held:*

1. That if the carrier had, contrary to positive instructions from the shipper, routed the car by an indirect and expensive line instead of the direct and cheaper route, or had without any instructions sent the car by the longer route, so as to burden the shipper with needless expense, such action would be prima facie unjust and unreasonable, and without justification would constitute fair basis for an order of reparation.

2. That the giving of instructions relieves the carrier from any obligation to forward by the cheaper route, and in this case, where the testimony does not indicate what instructions were actually given, an order in favor of the complaining shipper can not be issued.

L. W. Dewey for complainant.

F. A. Durban for Baltimore & Ohio Railroad Company.

Percy Baxter for Cincinnati, New Orleans & Texas Pacific Railway Company.

C. B. Northrop for Southern Railway Company.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

Complaint alleges that about April 26, 1902, Dewey Brothers shipped from Summit, Licking County, Ohio, a carload of hay, 20,000 pounds, to Lenoir, North Carolina, with instruction to route "via Strasburg Junction and Southern Railway", but that defendants' agents failed to comply with said instructions with the result that complainant, instead of 35 cents per 100 pounds was compelled to pay 46 cents per 100 pounds or $92 freight charge instead of $70, a rate excessive and unreasonable, subjecting complainant to unjust discrimination and undue prejudice and disadvantage in violation of the Act to regulate commerce.

The answer of the Carolina & Northwestern Railway Company denies the facts alleged in the complaint and avers that the rate, if the facts were as alleged, is the same by defendants' route as if shipped as per instructions alleged to have been given.

The answer of the Cincinnati, New Orleans and Texas Pacific Railway Company justifies the combination rate via Cincinnati of 46 cents and avers that via Virginia Cities the rate would be 40½ cents per 100 pounds.

The answer of initial defendant, the Baltimore and Ohio Railroad Company, denies allegations of complaint, avers instructions were "via Cincinnati and Southern," that these instructions were complied with and the rates charged and collected were the open, uniform and legal rates, and, so far as defendant participated therein, not unreasonable and unjust.

The Southern Railway Company answering admits receiving on April 19, 1902, Baltimore and Ohio car 67383 at Harriman Junction, Tennessee, which it turned over to the Carolina & Northwestern Railway at Hickory, N. C., and on which it collected its proportion of the 35½-cent rate from Cincinnati, Ohio, to Lenoir, N. C., and denies any charge made or rate participated in was unreasonable or unjust.

About April 14, 1902, Dewey Brothers shipped from Sum-

mit, Licking County, Ohio, a carload of hay of 20,000 pounds which they delivered to the Baltimore and Ohio Railroad Company consigned to Lenoir, North Carolina.

The complainant alleges that instructions were that the car be shipped via "Strasburg Junction and Southern Railway." The initial defendant avers the instructions given were to route "via Cincinnati and Southern Railway".

The rates by way of the Virginia Cities, established and in force at the date of shipment, were 5 cents per 100 pounds up to Columbus, 9 cents thence to Richmond or Lynchburg and 26 cents thence to destination, a total of 40 cents per 100 pounds, while the published combination rates via Cincinnati were 10½ cents per 100 pounds to the latter point and 35½ cents thence through to point of delivery, a total of 46 cents per 100 pounds or $92 for the carload of 20,000 pounds, from Summit to Lenoir.

In the absence of any instructions by the shipper, it would appear to be the duty of the receiving carrier not only to charge the lowest combination of rates between given points but to give to the shipper the advantage of the shorter route and lower rate.

If the carrier had contrary to the positive instructions of the shipper taken the responsibility of routing the car by indirect, expensive lines instead of the obvious, direct and cheaper route, or had without any instructions so routed the car as to burden the shipper with the needless expense of the longer route, it would be prima facie unjust and unreasonable and would, without explanation, constitute fair basis for an order requiring the carrier to reimburse the shipper for the overcharge thus wrongfully imposed.

But in this case that there were some instructions appears both from the complaint and answer.

The impossibility of determining what those instructions were from the evidence submitted leaves the Commission with no adequate grounds for a finding on the subject. The pleadings on both sides allege instructions, and these are contradictory, the defendants being under oath.

The complainant was not clear on the subject. Its only wit-

ness examined said: "We gave the instructions, I think, over the telephone to the party who loaded the hay, and he in turn gave verbal instructions to the agent;" and again: "I think I did but I may be mistaken about it," and this could well be, since the hearing was more than three years after the transaction occurred. Neither the shipping agent of complainant nor the station agent of defendants, the actual parties to the instructions, were present to testify. The complainant submitted two letters from a division freight agent of a defendant in one of which the subject of instructions is not mentioned and another to a Baltimore division freight agent, in which it is recited that the station agent at Summit had followed the oral instructions of the shipper who "asked that it be routed via Cincinnati and the Southern Railway" and in commenting on a possible misunderstanding said it was an "even break" whether the agent misunderstood or the shipping agent had given instructions.

It is clear that even if the duty of the agent had been to ship by the route giving the lowest combination in the absence of instructions, the agent is relieved of that responsibility of direction in the face of specific instructions by a shipper when the agent consents to the routing suggested. It is customary for the agent to sign three bills of lading, one usually taken as the original which is sent the consignee, one for the files of the office and one for the files of the shipper.

Where instructions for shipping are out of the ordinary course and the agent consents to bill by the route indicated, it should appear on the bill of lading, and the shipper thus receives immediate notice of the route; but this is not always complied with and it may happen that the bill of lading gives no evidence of instructions or routing.

No bill of lading was in evidence, and the complainant was not positive as to the method even of giving its instructions.

Upon the facts appearing it is impossible to conclude that defendants violated instructions when it is impossible to find from the evidence what these instructions were. By the route selected the rates charged and collected were the legally published rates of defendants for the haul.

There was no allegation or evidence that these rates by this

route were unreasonable for the service rendered, but only a protest against the route by which the car was shipped; and the responsibility for this selection was not so clearly fixed upon defendants or their agents as to warrant an order for reparation. The complaint must therefore be dismissed.

No. 811.

THE ST. LOUIS HAY & GRAIN COMPANY
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY and THE MOBILE & OHIO RAILROAD COMPANY.

Decided December 20, 1905.

The service of defendants in handling reconsigned hay at and from East St. Louis is more expensive as a general rule, if not invariably, than the service performed in case of shipments through East St. Louis, while the privilege of reconsigning hay from that point at a charge less than the established local rate is of substantial value to dealers in that city. *Held:*

1. The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates.

2. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support a charge of unjust discrimination.

Jas. W. Dye for complainant.
Perkins Baxter for defendants.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman:*

Discrimination in rates on hay is alleged in this case, and the following facts are found:

The complainant is a corporation existing under the laws of Illinois, having its principal office at St. Louis, Mo., and is quite extensively engaged in the business of buying, shipping

and selling hay. Its purchases are made on the market in East St. Louis and at various points of origin in Illinois, Missouri, Kansas, Iowa and Indian Territory and largely in the first named state and the principal places of sale are cities and towns, south of St. Louis, in the Mississippi valley and territory east thereof. The destination points referred to for illustration and comparison are Memphis, Mobile and New Orleans.

The defendants are severally interstate carriers by rail and as such subject to the act to regulate commerce. The Illinois Central system includes lines from East St. Louis to Memphis and to New Orleans. The Mobile & Ohio extends from East St. Louis to Mobile. The latter road with its connections also carries hay from East St. Louis to Memphis and New Orleans, and the rates to these destinations are the same by both routes.

The hay in question comes in the first instance to East St. Louis, where a considerable part of it is sold for local use or for re-shipment. In some instances, or from some points of origin, there are through rates to southern destinations which are divided between the lines north and the lines south of East St. Louis as they may agree. More frequently, however, it appears that no through rates are provided, but the hay comes to East St. Louis on a local rate to that point and, if carried beyond, takes the rate applicable in such cases. This is known as a reconsignment rate and is invariably the same to a given destination without regard to the point of origin, that is, without regard to the local rate paid to East St. Louis. The reconsignment rate to Memphis is 10 cents in all cases, and to Mobile and New Orleans 17½ cents. These respective rates apply to all "common point" territory.

There is also a local rate from East St. Louis to Memphis of 12 cents, and to Mobile and New Orleans of 20 cents, but as no hay originates at East St. Louis these local rates are seldom used.

Now, complainant asserts that on through shipments from points of origin to Memphis the carriers south of East St. Louis get 10 cents as their proportion of the through rate, which is exactly the same as their reconsignment rate, whereas on through shipments to Mobile and New Orleans the carriers south of East St. Louis accept 16 cents as their proportion of the through

rate, while maintaining a reconsignment rate of 17½ cents to those points. Complainant also says that in cases where no through rates to Memphis are published, but the hay is billed and carried as a through shipment without reconsignment at East St. Louis, the carriers south of that point charge and accept their reconsignment rate of 10 cents. In other words, according to complainant, when hay moves to Memphis the total charge is the same whether it is transported as a through shipment or carried locally to East St. Louis and there reconsigned, whereas in case of hay moving to Mobile and New Orleans the through rate is 1½ cents less than the local rate to East St. Louis plus the reconsignment rate from that point. Stated in another way, complainant in effect avers that there is a reconsignment charge at East St. Louis of 1½ cents on hay destined to Mobile and New Orleans, and no reconsignment charge on hay destined to Memphis, although the conditions and service at East St. Louis are the same in one case as in the other. This is the discrimination complained of which is alleged to be an undue preference of Memphis as compared with Mobile and New Orleans, and to give to the through shipper from points of origin an undue advantage over the dealer who buys and reships at East St. Louis.

It will be observed that the complaint is based upon the averment that on through shipments to Memphis the defendants receive as their share of the total charge the same amount as their reconsignment rate from East St. Louis, and that on through shipments to Mobile and New Orleans they accept as their share 1½ cents less than the reconsignment rate. In other words, it is asserted in substance that in no case is there any difference between the through rate and the sum of the in and out rates when the destination is Memphis, while in every case there is a difference of 1½ cents when the destination is Mobile or New Orleans.

The difficulty with this contention is that it is not sustained by the proofs. In very many cases, if not generally, the fact appears to be otherwise. The defendants explained in detail their divisions of through rates with the several lines which bring hay to East St. Louis, including their maximum and minimum divi-

sions with each line, and no attempt was made to dispute the correctness of their statements in that regard. These divisions show a considerable variation and while ordinarily less than the reconsignment rate are sometimes a little more. Particular instances were given where the net results were more favorable to the defendants in the case of through shipments than in the case of reconsigned shipments to the same destination.

It appears from this testimony that the maximum proportion of through rates to Memphis received by the Illinois Central is 10.3 cents, the minimum 7 cents. Its maximum proportion of through rates to New Orleans is 18.1 cents, its minimum 15 cents. The *average* proportion of the Memphis rate received by that company was stated to be 8.6 cents; and of the New Orleans rate 16.5 cents. Analysis of the divisions received by the Mobile & Ohio would show, as we understand, substantially the same figures.

The complaint in this case names three places, Mendon, Coatsburg and Camp Point, local stations in Illinois on the Burlington system. There are through rates from those points to New Orleans, perhaps to Mobile, but not to Memphis. It is true that the defendants' proportion of these through rates is 16 cents, or 1½ cents less than their reconsignment rate; and there appear to be a number of other points of origin having through rates to Mobile and New Orleans of which the defendants' proportion is also 16 cents.

On the other hand, there are numerous through rates to these southern destinations of which the proportion received by the defendants varies, as above stated, from 15 cents to 18.1 cents. While the exact fact cannot be determined from the record, it seems probable that a large portion of the hay carried on through rates to Mobile and New Orleans pays the lines south of East St. Louis from a cent to a cent and a half less than their reconsignment rate from that point.

On hay carried to Memphis the difference in most cases is apparently not so great between the reconsignment rate of 10 cents and the proportion of the through rate. This would naturally be so as the distances and rates are materially less than to Mobile and New Orleans While the defendants' proportion

of through rates to Memphis range from 7 cents to 10.3 cents, the proportion from some points of origin is the same as the reconsignment rate and perhaps approximates that rate on a considerable part of the actual through shipments to Memphis. In this connection it may be observed that through rates to Memphis from given points of origin appear to be less common than from the same points to Mobile and New Orleans. Where through rates are not provided the traffic would ordinarily move to East St. Louis on the local rate and be forwarded on the reconsignment rate, as that combination would give the lowest through charge available to the shipper.

The defendants profess willingness to join in through rates to Memphis in all cases where the divisions allowed to them are satisfactory. In effect they offer their reconsignment rate as an acceptable basis of through rates with any northern line desiring to make the arrangement. Their share at present where through rates are in effect, is seldom more, and then only a trifle more, than the reconsignment rate; it is often less and materially less than that rate. The occasional instances in which their share of a through rate is the same as the reconsignment rate appear to be accidental, and do not indicate any improper design or unlawful action. Through rates are matters of voluntary agreement between connecting carriers and it is not the fault of defendants that through rates to Memphis are not more generally provided.

The complainant lays much stress upon the alleged fact that the reconsignment rate has been frequently accepted on through shipments from points where there are no through rates to Memphis. This appears to have occurred in some cases, and perhaps in quite a number of cases. It ought not to have happened at all. Such an application of the reconsignment rate was clearly unwarranted and illegal. In the absence of a through rate each road participating in the carriage of a through shipment is bound to charge its local rate, since in such case the lawful through rate is the sum of the local rates. The defendants concede this fully, asserting at the same time that any such use of the reconsignment rate was the ignorant or negligent act of subordinates, which was wholly without the sanction or knowledge

of their superiors, and that it would not thereafter be permitted. We see no reason to doubt the truthfulness of this declaration, and therefore assume that the lawful rate is now always applied.

In this connection, however, the defendants further say that in all cases where the reconsignment rate was improperly used, if that has happened, they would have been entirely willing to join in through rates yielding them the same amount they actually received, and that they are not to blame because such through rates were not available. In other words, it is insisted that complainant was not harmed by this wrongful application of the reconsignment rate, since in no case did it result in lower aggregate charges on a through shipment than the through rate which any originating line was at all times free to establish; and this appears to be a reasonable inference from all the facts and circumstances of the situation. While any misuse of the reconsignment rate, whenever or however it may have occurred, is a proper subject of condemnation, we do not perceive that complainant has been injured by the misuse shown or that the evidence in that regard has any material bearing upon the question at issue in this proceeding.

Hay is shipped in large quantities to and through East St. Louis which is an important market for that commodity. While a considerable amount is purchased at local stations in the states named, it would seem that the greater part is consigned to commission merchants who sell it upon inspection in the car in which it arrives at that place. Some of it is bought for local consumption there and at St. Louis. Of the total amount handled at East St. Louis and carried to points beyond, it is estimated that thirty per cent moves on through rates from origin to destination, without unloading or breaking bulk; the other seventy per cent is transported to East St. Louis on the local rates of the several lines originating the traffic. Some of this is sent south in the cars in which it is received. Generally, however, when destined to southern territory, the hay is taken to a warehouse and there unloaded for the purpose of assorting, grading and reshipping.

As a rule the lines carrying hay to East St. Louis do not extend further south, while the southern lines for the most part

terminate at that point. The Illinois Central operates lines north as well as south of East St. Louis but apparently brings very little hay to that market. In some instances there is physical connection between the northern and southern lines, but more frequently an intermediate belt line or switching road is employed to effect the transfer. While the conditions are somewhat complicated, as was shown in a former case brought by this complainant, a detailed description is not deemed necessary in the present proceeding. It is sufficient to say that, generally speaking, the service rendered in handling reconsigned hay is materially greater and more expensive than is required in cases of through shipment. As regards time and cost, delivery of local shipments by an in-bound road to a warehouse is practically the same as delivery of through shipments to a connecting line; but a separate service is performed, involving substantially equal expense, when the reconsigned shipment is moved from the warehouse to the line which transports it to destination. In short, there is frequently and perhaps ordinarily twice as much switching in one case as in the other. The customary payment for switching a loaded car is $2.00; empty cars appear to be switched without charge.

As above stated, this reconsigned hay is carried at fixed rates provided for that purpose which are lower than local rates from East St. Louis and do not depend upon the origin of the traffic. To secure a reconsignment rate the shipper is required to furnish evidence by expense bills that the hay forwarded, or an equivalent tonnage of that article, has paid a local rate to East St. Louis. As the volume of hay currently received at that point exceeds materially the amount reshipped, on account of the large local consumption, there is usually if not always a surplus of expense bills and consequently no great difficulty in meeting the condition on which reconsignment rates are allowed. In point of fact these rates are applied to practically all reshipments.

Without entering upon a detailed comparison it may be taken as generally true that the through rate from a given point of origin to either Memphis or New Orleans is less than the local rate to East St. Louis plus the reconsignment rate from that

point; and this accords with a rate-making rule of extensive and common application.

Where through rates are in effect the proportions of the lines north of East St. Louis are often the same as their local rates, but there are numerous instances in which such proportions are less than the local rates. The proportions of the southern lines are sometimes but not usually the same as their reconsignment rates; occasionally they are greater but more frequently they are less, as has already been explained.

The territory in which this hay is produced is very large and a number of lines bring it to East St. Louis. The points of origin are numerous and at greatly varying distances from that market. The territory of sale is likewise extensive and served by several lines. Under these circumstances differing divisions of through rates would naturally occur. Indeed, we can understand that like or uniform divisions would be impracticable, unless the through rates were simply the combination of local rates. As above observed, through rates are matters of voluntary arrangement and may ordinarily be divided as the interested lines agree.

Conclusions.

The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection. In deciding the former case the Commission said:

"It is well understood that a through rate may properly be less than the sum of the locals to and from a divisional point. The mere fact, therefore, that these defendants make in connection with northern lines a joint rate on hay from points of production to points of consumption through East St. Louis which is less than the rate into that point added to the rate out does not establish the illegality of any of the rates involved."

St. Louis Hay & Grain Co. v. *Mobile & O. R. Co. et al., ante,* 101.

Nor is it unlawful for the defendants to maintain reconsignment rates which are higher in some cases than their proportions of through rates. The service of the carriers in handling re-

consigned hay is more expensive as a general rule, if not invariably, than the service performed in cases of through shipment, while the reconsignment privileges in question must be of substantial value to the dealers at East St. Louis. In no instance shown does the difference appear to be unreasonable or otherwise in violation of the regulating statute. The circumstance that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct or support the charge of unjust discrimination. Aside from the misuse of the reconsignment rate as stated in the findings, which is not likely to be repeated, we are unable to sustain the complainant's contention either as regards the facts or the law applicable thereto.

An order will be made dismissing the complaint.

No. 723.

GEORGE J. KINDEL

v.

BOSTON & ALBANY RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PENNSYLVANIA COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; ERIE RAILROAD COMPANY; CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; DENVER & RIO GRANDE RAILROAD COMPANY; RIO GRANDE WESTERN RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; UNION PACIFIC RAILROAD COMPANY; and WABASH RAILROAD COMPANY.

Decided December 28, 1905.

1. The fact that a carload rating has been established on cotton-piece goods from the east to Pacific coast points because of water competition, and the fact that duck and denims have been given carload rates to Salt Lake City and Denver to encourage manufacturing industries at those points, while elsewhere throughout the country the rate on cotton-piece goods is the same for any quantity, do not indicate that the action of defendants in denying a carload rating on tickings, drills and sheetings to Denver is unlawful.

2. Defendants' rates per hundred pounds on cotton-piece goods in less than carloads from New York, Boston and other eastern points are $2.24 to Denver and $1.50 to San Francisco. The charge to Denver is a combination of rates from the point of shipment to the Mississippi River, Mississippi River to Missouri River, and Missouri River to Denver. From New York to Chicago, from Chicago to Denver, and from St. Louis to Denver for a long period of years cotton-piece goods have been given rates substantially below the rates on first class articles, and throughout the United States greater or less differentials on cotton-piece goods under first class have been maintained with one notable exception, namely, from Missouri River points to Denver. Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense a measure of the value of the service; but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. The rate of $1.50 on cotton-piece goods from the east to San Francisco, about 3400 miles, is assumed to cover the actual cost of the service, and that rate for the 1400 to 1600 miles less distance to Denver, and saving the haul of that distance over mountain ranges where fuel and labor are counted more expensive, is found to be reasonable for the transportation from New York, Boston and other eastern points to Denver. Under the present combination rate to Denver no reduction from local charges is made on account of the through haul of 2000 miles. Such application of combined local charges to a long distance shipment places a wrongful burden upon the shipper. The exaction of first class rates on cotton-piece goods between Missouri River points and Denver in view of the long-prevailing differentials in other parts of the country and other existing conditions is unjust and unreasonable.

Held, That the result of the excessive rate on cotton-piece goods between the Missouri River and Denver and the application of full locals in making up the through combination rate from New York, Boston and other eastern points taking the same rates to Denver is to make the through rate excessive, and that such through rate to Denver to be reasonable should not exceed $1.50 per hundred pounds.

Edward P. Costigan for complainant.

J. F. Vaile for Denver & Rio Grande Railway Company and Rio Grande Western Railroad Company.

Charles E. Gast for Atchison, Topeka & Santa Fe Railway Company.

T. F. Dunn for Southern Pacific Company.

W. R. Kelly for Union Pacific Railroad Company.

O. E. Butterfield for Michigan Central Railroad Company.

George E. Greene for Lake Shore & Michigan Southern Railway Company.

Hugh L. Bond, Jr., for Baltimore & Ohio Railroad Company.

S. A. Lynde for Chicago & Northwestern Railway Company.

George F. Brownell for Erie Railroad Company.

Samuel Hart for Boston & Albany Railroad Company.

Ira A. Place for New York Central & Hudson River Railroad Company.

Report and Opinion of the Commission.

Clements, *Commissioner:*

Complainant alleges that he is a manufacturer of beds and bedding at Denver and defendants are common carriers subject to the Act; states the short-line distances from Atlantic ports to Chicago, East St. Louis, Kansas City, Denver and San Francisco, and further alleges that over some of the routes traffic passes through Denver to San Francisco; sets forth the rates from said Atlantic ports to such western points on cotton-piece goods, duck, denims, tickings, drills and sheetings; and complains that said rates to Denver are unreasonable and unjustly discriminate against him, the traffic, and the city of Denver.

Complainant further alleges that ticking, drills, and sheetings from New York and points in the east to Denver take a rate of \$2.24, whether carload or less than carload, but that duck is given a rate of \$1.66, carload, and denims \$1.79, carload; that duck, denims, drills, and sheetings take lower rates to San Francisco, and duck, drills, and sheetings, take lower rates to Denver than ticking to the same points; that East St. Louis, Chicago, and Kansas City have the same rates on ticking, drills, sheetings, duck, and denims, carload and less than carload; that these articles are similar in nature, use, value, and weight, and should have the same rate; that duck and denims to San Francisco have a 24,000-pound carload minimum, while to Denver the minimum is 30,000 pounds; that these regulations and rates violate the first four sections of the Act to regulate commerce

and give undue preference to San Francisco and other favored cities.

The answers of the various defendants admit the general situation stated in complaint, as to rates and charges, with suggested corrections as to certain distances therein given, averring that the carload minimums had been equalized by the establishment of a 30,000-pound minimum on cotton-piece goods to San Francisco, and denying discriminations, preferences, or any violation of the Act to regulate commerce.

The specific complaint in the case at issue is upon cotton-piece goods from points east to Denver.

The facts developed in pleadings and evidence are as follows:

The complainant is a manufacturer and shipper of beds and bedding at Denver, Colorado.

Denver had 35,629 inhabitants in 1880, increased by 1890 to 106,713, or 199.5 per cent, and in 1900 had 133,859, a further increase of 25.4 per cent, now standing, in the United States, twenty-fifth in population, which is estimated at 150,000. It is within the area of comparatively high rates, beyond the borders of dense population and the heaviest traffic; but is one of the gateways to the west.

The rate from New York and Boston on these cotton-piece goods is \$2.24 per hundred pounds in less than carload lots, and is the same on carload lots on ticking, drills, and sheetings. There is a carload rate of \$1.66 on duck and of \$1.79 on denims between the same points.

Cotton-piece goods include duck, denims, ticking, drills and sheetings. Duck is a heavy, cotton fabric weighing 8 to 24 ounces to the yard and worth from 10 to 40 cents per yard, is used for awnings, sails, wagon covers, tarpaulins, clothing, ore sacks, floor covering, upholstering, etc. Denims weigh from 5-½ to 9 ounces to the yard, cost from 7-½ to 11-½ cents per yard, and are used for clothing, overalls, upholstery, curtains, etc. Drills weigh about 6 ounces to the yard, cost up to nearly 10 cents per yard, and are used mainly for clothing, pockets, etc. Ticking weighs from 3 to 8 ounces and costs 4 to 10-½ cents per yard, and is used for mattresses, awnings, etc. Sheetings

weigh 2.65 to 6 ounces per yard, are worth 4 to 8-½ cents per yard, and are used for domestic purposes.

These are all included under cotton-piece goods in the Official Classification, and under Rule 25 carried at 15 per cent less than second class; in the Southern Classification at fourth class; and in the Western Classification as first class.

While under the first class in the Western Classification these cotton-piece goods take a commodity rate to Missouri River points but not beyond, though for shipments through San Francisco, with the locals as far back as Salt Lake City, the effect is to give to these points the advantage of the transcontinental carload rate.

The following table shows the rates on cotton-piece goods, in cents per 100 pounds:

TO DENVER.

From		*To E. St. Louis*	*Beyond*	*Total*
	(Duck, C. L.	64	102	166
Boston	(Denims, C. L.	64	115	179
and	(Drills,	64	160	224
New York	(Sheeting,	64	160	224
	(Ticking,	64	160	224

The various classifications do not provide for carload rates on cotton-piece goods. Carload commodity rates were established to San Francisco to meet water competition at that point.

Soon after, a factory for overalls at Salt Lake City, Utah, asked and was granted a carload rate on denims to enable it to compete within a wider radius, and a like institution at Denver still later secured a similar concession. A carload rate was also given Denver on cotton ducks, but seems not to have been at the same time demanded or considered on other cotton-piece goods, although subsequently the subject was brought to the attention of certain carriers, but the carload rate was denied.

The testimony at the hearing in this case showed that with such a carload rate to Denver the trade would justify shipments in carload lots of other cotton-piece goods, but it also appeared that the greater advantage would accrue to Denver if Denver alone enjoyed that privilege.

Cotton mills have in later years been established in the south near the source of supply of the raw material, and making as yet for the most part coarser yarns and heavier fabrics, already consume more pounds of cotton that their long-established northern rivals.

The northern railway lines in trunk line territory, to preserve their accustomed share of the traffic and favor the northern mills, handicapped as they were with a thousand-mile rail haul on their raw material from the cotton fields of the south, reduced their rates on the finished product to the Mississippi River, and the transcontinental lines to secure the extreme western trade in these goods from competing carriers by water put in a rate of $1.50 upon these goods to San Francisco. The water lines continued to lower their rates to secure this desirable freight until to-day it is carried by vessel from New York at the rate of 80 cents per 100 pounds, and the vessel from New York absorbs the local, rail rate to shipside from the interior mills, up to 20 cents per 100 pounds; in effect, accepting in some instances 60 cents net per 100 pounds for the haul between the east and the west coasts.

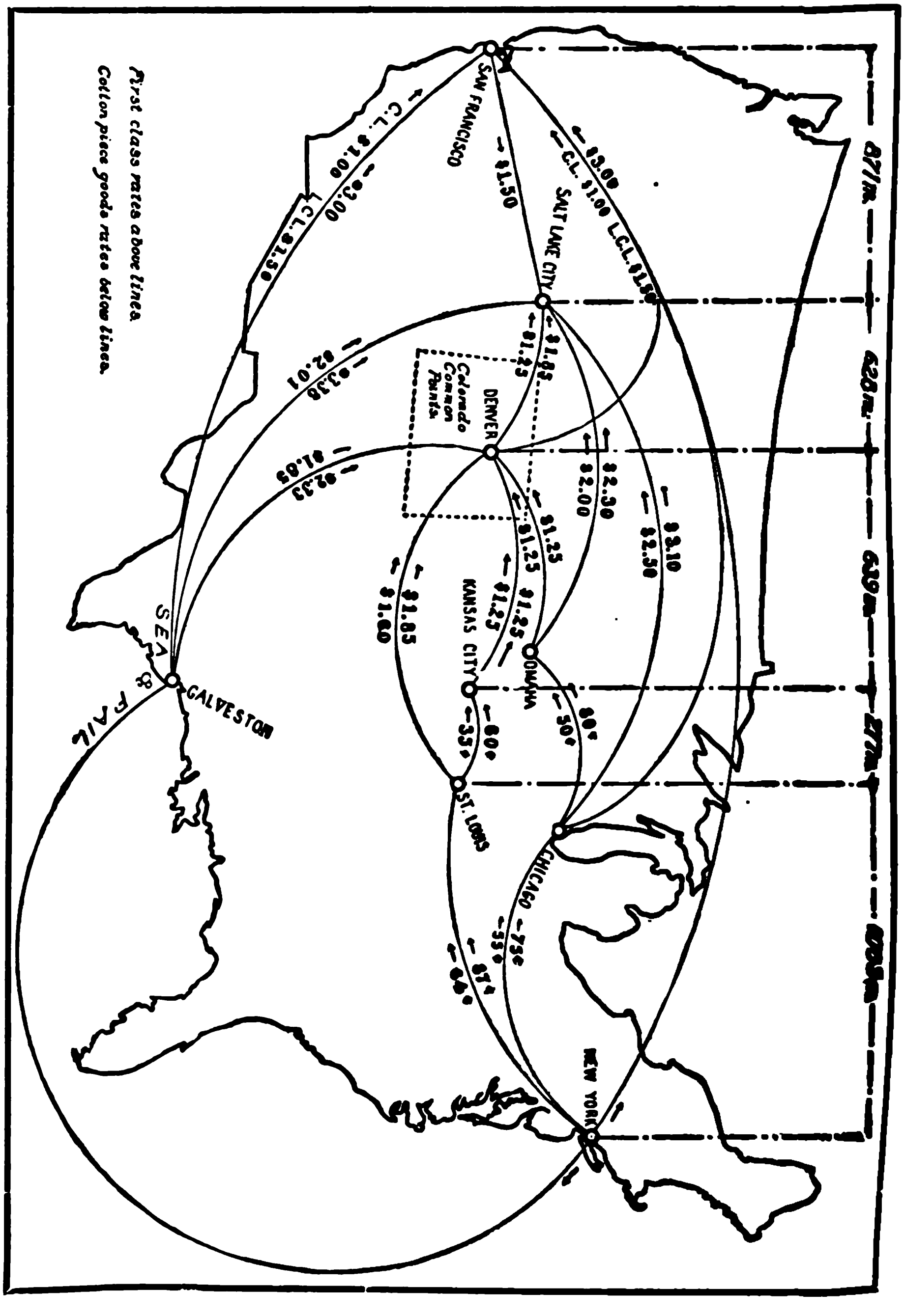
This haul requires from 30 to 60 days and the rail haul only from 15 to 20, and this advantage in time reduces interest, gives quicker returns, and the water rates also carrying in addition marine insurance still leave the greater portion of goods in controversy to the carriers by rail, who, to secure results, established a through transcontinental rate of $1.00 per 100 pounds in carload lots on cotton-piece goods and 90 cents per 100 pounds on duck, denims, drills and sheetings.

From St. Louis to Colorado common points the first class rate has declined from $2.10 in 1889 to $1.85, the present rate, and cotton piece goods commodity rates in the same period from $1.90 to $1.60. From Chicago to the same points first class rates have been reduced from $2.30 to $2.05. Freight rates on cotton-piece goods from New York to Chicago were 50 cents in 1889 and 55 cents at the present time, while the first class rate between these points has been fairly constant at 75 cents per 100 pounds.

The rate on duck, in carloads, from New York to Denver is

$1.66 all rail and $1.23 sea and rail; on denims $1.79 all rail and $1.40 sea and rail; and on drills and sheetings $2.24 all rail and $1.85 sea and rail. The rate to East St. Louis from New York is 64 cents on all cotton-piece goods; on duck East St. Louis to Denver, in carloads, $1.02, or a total of $1.66; on, denims, in carloads, $1.15 to Denver, or a total of 1.79; and drills and sheetings, in carloads or less, $1.60 to Denver, or a total of $2.24 from New York.

The chart following shows rates first class and on cotton-piece goods from eastern points to San Francisco, with intermediate locals and combinations.


First class rates above lines.
Cotton piece goods rates below lines.
SAN FRANCISCO
SALT LAKE CITY
DENVER
Colorado Common Points.
KANSAS CITY
OMAHA
ST. LOUIS
CHICAGO
NEW YORK
GALVESTON
SEA & RAIL

Statement showing Rates on First Class and Cotton-Piece Goods from Chicago, Illinois, to points named below:

RATES PER HUNDRED POUNDS.
From Chicago, Illinois.

Distances Miles	To	First Class	Cotton-Piece Goods C. L.	Cotton-Piece Goods L. C. L.
1531	Salt Lake City, Utah.	$3.10	$2.50	$2.50
1109	Deadwood, S. D.	2.25	1.95	1.95
493	Omaha, Nebr.	.80	.50	.50
2328	San Francisco.	3.00	1.00	1.50
1425	Denver, Colo.	2.05	1.75	1.75

Statement Showing Rates on First Class and Cotton-Piece Goods from Columbus, Georgia, to points named below:

From Columbus, Georgia.

To	First Class C. L.	Cotton-Piece Goods L. C. L.
Denver, Colorado.	$3.20	$2.10
Salt Lake City, Utah.	4.25	2.85
Mississippi River (East St. Louis).	1.35	.56
Chicago, Illinois.	1.57	.55
Omaha, Nebraska.	1.95	.85
Duluth, Minnesota.	2.13	.88

Statement Showing Rates on Cotton-Piece Goods Between the Points Named Below, per 100 Pounds, and per Ton (2,000 Pounds), per Mile; also Distances.

From		To		Distance.	In Cents per 100 lbs.	Per Ton Per Mile.
Boston,	Mass.	East St. Louis, Ill.		1212	64	$.01056
New York,	N. Y.	Do		1062	64	.01205
Columbus,	Ga.	Do		681	50	.01468
Boston,	Mass.	Chicago,	Ill.	1006	55	.01093
New York,	N. Y.	Do		912	55	.01206
Chicago,	Ill.	Omaha,	Nebr.	493	50	.02030
East St. Louis,	Ill.	Kansas City,	Mo.	274	35	.02555
Kansas City,	Mo.	Denver,	Colo.	639	125	.03912
Omaha,	Nebr.	Do		538	125	.04647
Boston,	Mass.	San Francisco, Cal.		3334	150 (LCL)	.009
Boston,	Mass.	Do		3334	100 (CL)	.006

The transcontinental tariffs applying the Western Classification from New York to San Francisco are as follows on class rates:

1	2	3	4	5	A	B	C	D	E
3.00	2.60	2.20	1.90	1.65	1.60	1.25	1.00	1.00	.95

From New York to East St. Louis, governed by the Official Classification, the class rates are as follows:

1	2	3	4	5	6
87	75	58	41	35	29

From East St. Louis to Denver, also under the Western Classification, the class rates are:

1	2	3	4	5	A	B	C	D	E
1.85	1.45	1.15	.92	.72	.84½	.64½	.57	.48½	.41

The sum of these last two first class rates makes a first class rate from New York to Denver, which indicates nothing, since the classifications are so entirely different as to bear no relation to each other save where by a coincidence the article in question may rest in the same class in both classifications.

The sea-and-rail rates to Denver from New York and Boston, governed by the Western Classification, through Atlantic and Gulf ports, are for the various classes as follows:

1	2	3	4	5	A	B	C	D	E
2.33	1.89	1.47	1.16	.93	1.08½	.82½	.75	.66½	.59

Cotton-piece goods by this route are $1.85, cotton duck, $1.23, and denims $1.40, per 100 pounds.

The rate on cotton-piece goods, all rail, L. C. L., New York to San Francisco, $1.50, per 100 pounds, is divided as follows:

Lines to Chicago,	$.55	per 100 pounds
Lines to Missouri River	.119	" pounds
Missouri River to Denver	.176	" pounds
Denver to Ogden	.208	" pounds
Ogden to San Francisco	.447	" pounds
	$1.50	

Upon the foregoing facts it is further found that the rates on cotton-piece goods from eastern points to Denver of $2.24 per hundred pounds is excessive, unjust and unreasonable.

Conclusions.

There are four principal methods of making rates to localities: that prevailing in the Trunk Line Territory, in practical compliance with the fourth section; that in the Southeastern Territory, where basing points or trade centers are recognized to which through rates are made and the local rates are added for rates to tributary territory. To the Pacific coast, water competition has brought about low rates, and a combination of these with the local rate back fixes the rates for the interior mountain territory points. In the case under consideration rates are made to Colorado Common Points with Denver, Colorado Springs, Pueblo and Trinidad named as such points in the schedules, but there are several hundred smaller intermediate points to which the rates apply, so that the system is nearly the equivalent of a blanket rate, or a like rate for a large territory.

The coast system of rate-making by adding the local back to the low through rate arouses complaints for the reason that the shortest haul where the system prevails has the highest rate; that is, rates are lower the nearer to the coast terminal—an apparent violation of the fourth section.

The basing point system arouses friction, in that rival centers and shorter-distance points demand like privileges, and the blanket rate finds objectors where an important point is ambitious to supply the surrounding territory.

Each has its advantages and each is open to some objections.

The two salient contentions of the complainant were for carload rates on tickings, drills, and sheetings, such as already exist on duck and denims to Denver, and against the comparative rates on these articles to and through Denver.

There are no carload rates upon cotton-piece goods throughout the country with three notable exceptions. For all the territory east of Denver the unit of cotton-piece goods traffic is the bale and not the carload. The rate on cotton-piece goods even to San Francisco was in competition with water carriage made $1.50 per 100 pounds in carload lots or less; but the water rate finally led the rail carriers to a further reduction to $1.00 per hundred from sea to sea, which was, however, limited to carload shipments, and of this rate the mountain country has the advantage, though the local rate back, as to Salt Lake City, is the same for carload or less than carload rates.

The Commission has hesitated to require the establishment of carload rates where none exist. If the normal unit of shipment is the carload, as in coal, ore, etc., it is of course a public benefit to secure for all the lower carload rate; but if the accustomed traffic has a less unit than a carload and ordinary shipments are by the ton or bale, or hundred-weight, the effect of a new lower carload rate is to give an advantage to the large shipper—a discrimination the Commission has not encouraged even though its first result is to secure lower rates to the large shipper, less cost to the carrier, and, in its encouragement of trade, to increase the carrier's revenues.

In the present instance almost the entire trade of the country in cotton-piece goods is carried on by the bale as the unit of purchase and of transportation. The carload rate was introduced into the transcontinental trade, induced by water competition, which is still 20 per cent below all rail rates. The exigencies of this competition left no alternative, it was claimed by the railroads, if they proposed retaining the business, but the low rates which result are in no sense a measure of the value of the services.

The carriers are justified in such competition so long as it is confined within reasonable limits and secures revenue sufficient

to defray the actual cost of transportation or more; but they are not justified in meeting even that competition with rates so low as to leave a burden which must be borne by non-competitive traffic. Because San Francisco has a carload rate on cotton-piece goods, for the reasons stated, is in no sense an argument for a like rating to intermediate points. The carriers granted a carload rate to duck and denims to Salt Lake City to encourage an overall factory and enable it to compete with San Francisco in the sale of miners' clothing, etc., and afterwards carload rates on the same articles were granted to Denver to encourage like enterprises there. The same reasons which induced the concessions at these points may in the friendliness or interest of the parties granting the concession, secure like favors for other points and other commodities. But there thus enters a new element into the question which may hardly be limited by the discretion of one party in interest or the apparent necessities of the other. If a special rate be granted to a community or locality, reasonable in itself and profitable to the carrier, it may become a discrimination as against other points or other commodities not so favored.

Tickings are indistinguishable from striped awnings when the patterns are similar, in weight, appearance, material, and value; and there is no transportation reason why one should have a carload rate and not the other. So nearly identical are the two articles that a privilege to one denied the other becomes a discrimination that is prima facie unreasonable. This is more true of tickings as compared with awnings, striped, than of the other descriptions of cotton-piece goods; and even the able representative of one of the carriers admitted he was "not prepared at this time to say that you have not some good case," referring to the demand for carload rates on ticking, though he scouted the idea that such a rate should be applied to cotton-piece goods in general.

With these exceptions to the coast and to Salt Lake City and Denver on duck and denims, the entire trade of the United States is carried on with rates the same for any quantity of cotton-piece goods.

The witnesses who testified for complainant in favor of a car-

load rate did not show any great demand for such rating, and while naming a possible annual demand for a dozen or more cars of so-called piece goods, under a carload rate, qualified the probable total by the suggestion it depended somewhat on Denver alone securing the rate.

The arguments of defendants that the granting of the carload rate would only lead to several small dealers uniting, or the consignment of a carload to a drayman for distribution, and work still greater hardship on the small dealer, who did not get in the combine, is without force and applies as well against the granting of any carload rate which might lead to identical results.

That there is no carload rate in the United States on these goods, save the exceptions mentioned, is a strong argument against requiring a carload rate to Denver on other cotton-piece goods. That duck and denims have been granted such a rate to Denver after urging, and for the express purpose of encouraging a Denver manufacturer, is hardly fair ground on which to base a claim of discrimination as between these two favored articles and other cotton-piece goods.

Much of the testimony was devoted to the consideration of rates on traffic other than that covered by the complaint, which forms no basis for an order, and has no direct bearing upon the situation save as illustrating by extraneous example the general system of making rates into and out of this territory and emphasizing the embarrassments of Denver and its shippers in the conduct of their business in competition with points more favored either by location or transportation rates.

As an instance, it was claimed that on straw matting from Yokohama the rate was $2.87 per 100 pounds to Denver proper, but if shipped to the Missouri River, more than 500 miles more distant, and paying the local return haul to Denver of 80 cents, the total rate was only $2.05. No actual shipments were specified under the former rate. Following the general rule of selection of rates by the carriers, the lowest combination ought to prevail here as elsewhere, and the published Denver rate, if such a shipment were made, would probably be found to be $2.05 by either route. Many like examples were submitted in

the testimony of alleged discriminations against Denver in the transportation of goods other than cotton-piece goods, but as these were not pertinent to the direct issue have on consideration been omitted both in the findings of fact and conclusions.

The present westbound rates from Chicago and river points on first class and cotton-piece goods are slightly lower than in 1887, when the Commission was established; but, with the exception of Missouri River rates to Denver, the relation between first class and cotton-piece goods has in this time been fairly constant, the latter always being a substantially lower rate than first class. As an instance, first class rates have from New York to Chicago remained for that period practically at 75 cents per 100 pounds, while cotton-piece goods from 1887 for nearly 13 years, or until January 1, 1900, were for most of the time at 50 cents, then for two years at 65 cents, and on March 10, 1902, made 55 cents, at which point they now remain—20 cents below first class rates.

In 1889 from Chicago to Denver first class rates were $2.30 and cotton-piece goods $2.05, or 25 cents below first-class; and these rates have fallen to $2.05 on first class and $1.75 per 100 pounds on cotton-piece goods; still a difference of 30 cents per 100 pounds in favor of cotton-piece goods.

From St. Louis, Mo., first class rates to Denver in 1889 were $2.10, and on cotton-piece goods $1.90 between the same points, or 20 cents difference in favor of cotton-piece goods, while the present rates are $1.85 for first class and $1.60 for cotton-piece goods, an increase in the differential to 25 cents.

But from Missouri River points the rates in 1889 were $1.60, the present rates are $1.25 or first class rates on cotton-piece goods. Everywhere else cotton-piece goods are carried at lower than first class rates; everywhere else that first class rates have been reduced cotton-piece goods have enjoyed a similar reduction, sometimes more, sometimes less; but between these points, by a singular exception, cotton-piece goods are denied any differential below first class rates though such a differential prevails in practically all other localities, save west of the Missouri river.

The transcontinental rates from the east to San Francisco being made in competition with rates by water cannot be used as a measure of reasonable rates for the service performed, it being held that when the competition is actual and active such reductions are forced upon the carriers by rail in order to secure the traffic. But while they are justified in thus reducing their through rates to a point below what would otherwise be a reasonable standard when forced by competition, even that situation does not permit them to transport merchandise at a loss and thus add to the burdens of intermediate points. They may not carry goods under any consideration below the actual cost of service and then make up the difference by unreasonably high rates on the same or any other traffic to shorter-distance points.

Now, in the present case, the all-rail rate to meet water competition from New York to San Francisco is $1.00 per 100 pounds, the vessels carrying the same goods between those points at 20 per cent less than the railroad rates, or 80 cents. These rates are by the carload. When in less than carload lot the rate is $1.50 per 100 pounds on cotton-piece goods. It is ordinarily fair to assume that a rate adopted by the carriers pays the actual cost of service, for less than that they would not be justified in charging.

The short-line distance from Boston to San Francisco is nearly 3,400 miles, and by many lines much more, and the cost of carriage of cotton-piece goods for that distance, it would seem, must be covered by $1.50 per 100 pounds, or $30 per ton.

Now, for the 2,000 mile haul to Denver, when it is considered that the carrier is saved the 1,400 to 1,600-mile haul over the mountain ranges where fuel and labor are counted more expensive, it would seem that the $1.50 must pay a reasonable profit to the carriers, and it is our judgment that the rates in question should not exceed that. Surely a rate which pays expenses for a 3400-mile haul will yield reasonable profits for a haul not much above half that distance when the service actually rendered is far the cheaper and easier half of the total haul.

Every reason which may be urged in favor of an extraordinary high rate from the Missouri to Denver applies with equal or

greater force to the mountain haul to the coast points, especially as to extra cost of transportation. The higher the expense of service for this haul which may be calculated as borne by the carrier, the greater margin remains above actual cost when the transcontinental rate of $1.50 per 100 pounds on cotton-piece goods is applied to a haul not much more than half so long.

As we have seen, the rate to the Mississippi River from New York on cotton-piece goods is 64 cents; from the Mississippi to the Missouri River is 35 cents, and from the Missouri River to Denver is $1.25 per 100 pounds. In making a through shipment from New York to Denver the rate on cotton-piece goods is the sum of these locals or $2.24 per 100 pounds, no reduction being made for the through haul of 2,000 miles.

The actual cost of service is ignored as an element of rate-making in this method of charging and collecting the local rates for through shipments. The local rates are fixed by the carriers to cover all terminal expenses on the shorter hauls, charges and delays to the initial and terminal points, and it is not reasonable on a joint through haul, where these terminal delays and expenses are spared at the intermediate points, that such economy in transportation should not be shared by the shipper who must bear the burden of the long 2,000-mile haul, and it is unreasonable and unjust on the part of the carriers that the long, uninterrupted through route, even if no through rate is agreed to, should bear the full local rates.

As shown in the findings, there has prevailed for many years a general differential in favor of cotton-piece goods under first class rates, between the principal markets in every direction and under all classifications. The notable exceptions have been from Missouri River points to Denver.

The rate per ton per mile on cotton-piece goods from Boston and New York to Chicago and East St. Louis, the first 1,000 miles of the haul to Denver, varies from 1 cent to 1 cent and 2 mills. The rate per ton per mile on the same goods for the final haul from Missouri River to Denver is from about 4 cents to above 4½ cents—out of all proportion to the service rendered and the cost of service.

A higher rate per ton per mile is justified for the haul from the Missouri River to Denver than from eastern points to the Missouri River. The conditions as to population, density of traffic, competition, and the many elements which enter into the cost and profit of transportation are different and it would be unreasonable to demand, concede or prescribe like rates for services that so widely differ. But these conditions are constantly approaching similarity. The population is making rapid strides, the traffic increases, wages, fuel and supplies are approaching eastern standards in cost; the planes of conditions are not parallel but have approached each other in the last twenty years and what may have been a justifiable difference in the cotton-piece goods rate when the traffic first reached this western territory by rail becomes unreasonable as the causes for that difference disappear.

The rate between the rivers, first class, is 60 cents, and cotton-piece goods, 35 cents, Chicago to St. Paul the rates are 60 and 40, St. Louis to St. Paul 63 and 42, New York to East St. Louis, 87 and 64, Columbus, Ga., to Chicago, $1.57 and 55 cents.

It is manifest discrimination when cotton-piece goods have been for so long a period over so vast a territory carried at rates below the first class rates, that from this one basing line, the Missouri River, the rates should without adequate reason be made first class. It is unjust to the locality and the traffic, and though it may be difficult to compute all the elements which necessarily go to the finding of a rate reasonable in itself, it is seldom that from so many dates and points of comparison a rate is shown to be unreasonable as is this rate on cotton-piece goods from the Missouri River points to Denver.

It is out of alignment with rates everywhere else. With the rate to the Missouri River 99 cents from New York and Boston or a total haul of about 1500 miles on cotton-piece goods, it is palpably unreasonable that increasing that haul one-third or about 500 miles to Denver should increase the rate by 125 per cent.

The result of this excessive rate between the Missouri River and Denver, and the use of full locals in making up the through

combination rate from Boston, New York and other eastern points taking the same rates to Denver, is to make the through rate excessive. As before stated, we think that the through rate to Denver to be reasonable should not exceed $1.50. Our conclusion upon the facts is that the rates complained of are unjust and unreasonable; and that the defendant carriers be ordered to cease and desist from further charging and collecting the same.

An order to this effect will be entered.

No. 722.

GEORGE J. KINDEL

v.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; ERIE RAILROAD COMPANY; and CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.

Decided December 28, 1905.

The question of regulation involved in this case is decided in the foregoing case of Kindel v. Boston & Albany Railroad Company et al. For reasons stated, reparation denied.

Edward P. Costigan for complainant.
George F. Brownell for Erie Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

Complainant in his petition alleges that the rate from Boston points to Denver, Colorado, on cotton-piece goods, is $2.24 per 100 pounds, and to San Francisco, Cal., from the same points is $1.50 per 100 pounds, in less than carload lots, and $1.00 per 100 pounds, in carload lots; that about August 4, 1903, a shipment of cotton-piece goods was made to complainant at Denver, Colorado, from Norwich, Conn., on which defendants charged and collected $2.24 per 100 pounds, which rate it is alleged is excessive, unreasonable, and, as compared with the rates to San Francisco and Portland, Oregon, a discrimination against Denver; and complainant prays reparation for the alleged overcharge.

Defendants enter general denial of the alleged facts and of any violations of the Act to regulate commerce.

The facts as shown by the pleadings and evidence are as follows:

Complainant bought of a jobber in Chicago, Ill., about August 4, 1903, three bales of ticking or cotton-piece goods weighing 1530 pounds, which were shipped from Norwich, Conn., to Denver at a freight charge of $2.24 per 100 pounds. The rate to San Francisco, Cal., and Portland, Ore., upon the same class of goods from the same point was at that time $1.50 per 100 pounds in less than carload lots.

The case, Docket No. 723, just decided is so clearly related to this complaint that they were heard together. The facts and relations of the various rates on cotton-piece goods from the east are there set forth in such detail that there is no occasion in the disposition of this claim for reparation to repeat them here.

CONCLUSIONS.

It is clear that the shipment upon which this complaint rests was part of complainant's scheme for attacking the comparatively high rate from the Missouri River points to Denver upon cotton-piece goods. It was not in the regular course of his trade, as he admitted that his shipments were made for the most part by sea and rail from the east by which route the freight charge is but $1.85 per 100 pounds to Denver.

His purchase was made in Chicago, from which point the shipment would have as well illustrated the rates which form his principal subject of complaint—that is, the rates from western points to Denver, especially the high rate from the Missouri River points or the resulting combination rate from Chicago to Denver.

In his testimony complainant disclaimed anything else, saying: "I did not go into the tariffs east of the Mississippi River. . . . I was concerned in this section of the country."

And at the hearing, in reply to the question, "Why did you bring those goods from Norwich. Conn., under a rate of $2.24

when you could have brought them at \$1.85?" the complainant said: "It was a mistake on the part of the shipper."

This test purchase in Chicago, the indifference as to eastern rates, the evident expectation of the shipment from Chicago instead of Norwich, Conn., which was by "mistake" of the shipper, eastern shipments of cotton-piece goods coming for the most part to Denver, as admitted by the lower sea-and-rail rate, all point unavoidably to the conclusion that this action is but supplementary to No. 723 and part of complainant's general attack to call attention to, and protest against, the rates from Missouri River points to Denver on the goods in question.

Relief having been granted in No. 723, so far as lay in the power of the Commission, by the condemnation of the rates in question, and the carriers having been ordered to cease and desist from charging and collecting the excessive rate complained of, which this suit was really brought to illustrate, the Commission is of opinion that under the circumstances and conditions shown to exist in this transaction substantial justice will be satisfied with the establishment of a reasonable rate, and that an order for reparation is not required.

No. 842.

M. NEWMAN

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; MICHIGAN CENTRAL RAILROAD COMPANY; PENNSYLVANIA RAILROAD COMPANY; PENNSYLVANIA COMPANY; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; ERIE RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; and WABASH RAILROAD COMPANY.

Decided January 10, 1906.

Defendants have classified leather scraps in less than carloads as third class since 1887, but in January, 1894, they limited such classification to scrap refuse from the manufacture of leather goods, and excluded strips or pieces cut from hide leather, and in January, 1905, such limitation was superseded in defendants' freight classification by the words "this rating will apply only upon scraps not available in the manufacture of leather goods." All leather scrap purchased by complainant contains leather pieces which can be used in the manufacture of leather goods, and the sole purpose of complainant in purchasing such leather scrap is to separate such pieces and sell them to persons having use for the various sizes and kinds. The effect of the new rule was to advance complainant's commodity from third to second class, which is the rating prescribed by defendants for leather. *Held:* That a third class rating for leather scraps in less than carloads is sufficiently high,

and that defendants' present classification and rating of that traffic is unjust and unreasonable.

M. Newman for complainant in person.

C. E. Gill for Trunk Lines in Central Freight Association Territory.

Geo. S. Patterson for Pennsylvania Railroad Company and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

Chas. C. Paulding for New York Central & Hudson River Railroad Company, Michigan Central Railroad Company, and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The complainant is a dealer in leather scraps and conducts his business in the city of New York. He complains that defendant railroad companies have unjustly advanced the rating of his commodity from third to second class.

In the manufacture of leather goods there remain certain small pieces of leather which are of no value in that manufactory. The size of these pieces, or scraps, varies with the business in which they are produced from a fragment to a piece containing 30 or 40 square inches, and they are of all kinds and grades of leather, from the cheapest sole leather up to the most expensive kid. These instead of being thrown away, are swept up, or gathered up, in the factory and put into bags or bales, The complainant purchases them after inspection either by the lot or by the pound. The price by the pound varies from two cents to fifteen cents, although the latter price would only be paid for scrap of an unusual quality. The ordinary price by the pound is from two to five cents. These purchases are from all kinds of manufactories in which leather goods are made, boot and shoe shops, harness shops, furniture factories, and in general wherever leather is used.

This scrap is all taken to the city of New York. The complainant buys little or nothing in New England and not much apparently east of Ohio. His operations extend as far west as

the Pacific Coast but most of his purchases appear to be made in the Missouri River Valley and middle west. He testified that his business would reach $100,000 per year in amount and that there were several other firms in New York doing substantially as much business as he, besides a number of smaller ones.

When these bags of scrap arrive at New York they are opened and sorted. A certain part is refuse and is sent to the fertilizer mill or stable. The testimony indicated that on the average about one-third of the entire weight transported to the complainant's factory would be of this character. The balance is separated into various grades according to the character of the leather and the size of the piece. These pieces are then sold to leather manufactories of different kinds and are used for a variety of purposes, as the making of leather rosettes, shoe tongues, short buckle straps, leather washers, small and cheap pocket books, etc., etc. The prices received by the complainant vary with the quality of the article sold, being for a few of the better pieces 20 cents a pound and down to 4 or 5 cents per pound for what can be used as leather. The refuse nets him about $3.00 per ton at his warehouse in New York.

Leather is generally shipped in bales or boxes and takes under Official Classification second class, in less than carload lots. Leather scrap is and has been since 1887 classified as third class. By note to classification number 12, in effect January 1, 1894, referring to leather scrap, it was provided "this classification will apply only upon shipments of the scraps or refuse from the manufacture of leather goods and will exclude strips or pieces cut from hide leather."

It did not appear just what application was made of this note or just what effect was produced upon the rating of leather scrap. The complainant and others in his line of business continued to ship this commodity at the third class rate.

In classification number 26, effective January 2, 1905, this note was changed to read as follows, "this rating will apply only upon scraps not available in the manufacture of leather goods."

Inasmuch as all the scrap purchased by the complainant contains leather pieces which can be used in the manufacture of leather goods, the sole purpose of the complainant being to sepa-

rate such pieces and sell them to those persons having use for the various sizes and kinds, the effect of this note was to advance the commodity of the complainant from third to second class, and this is the gravamen of his complaint.

The weight per cubic foot of leather scrap as offered for shipment by the complainant did not definitely appear. Scrap would probably be about as dense as leather. Its value is much less. The market price of ordinary sole leather is from 25 to 45 cents per pound, that of other kinds of leather much greater, being frequently several dollars per pound. The liability to damage in case of scrap is practically nothing.

The complainant testified that his business was done upon a very close margin and that this advance in the freight rate virtually absorbed the profit. The advance would compel the complainant to pay the difference between the second and third class rate upon all his shipments, except what is sold as refuse, and this would without doubt amount to a considerable sum in the course of the year. It is not our impression that it would suspend this business or materially change the manner of its transaction if the increased rate should be continued, although it would materially curtail the profit, which was already small.

It was not seriously claimed and no evidence was introduced tending to show that leather proper was ever offered for shipment as scrap, or that it would be difficult to detect the fraud if attempted, although the carriers were especially inquired of in this particular.

We find that leather scraps ought not to bear a higher rate than third class and that the rate now imposed by the defendants for the transportation of that commodity is unjust and unreasonable.

We further find that, comparing leather scraps with other articles carried by the defendants at third class rates, it is unjust and unreasonable to impose upon that commodity the second class rate.

Conclusions.

By the prosecution of his business the complainant gives value to a thing which would otherwise be thrown away, and

in the production of this economy he should not be hampered by the exaction of unreasonable transportation charges. For sixteen years previous to January 2, 1905, the defendants carried his commodity at a third class rate. We have found as a fact that this rate was sufficiently high and we conclude that its advance was unjust and unreasonable and that the present rate imposed by the defendants is unjust and unreasonable.

The defendants rely in defense upon the case of *Derr Mfg. Co. v. Pennsylvania R. Co.,* 9 I. C. C. Rep. 646, and upon *Planters' Compress Co.* v. *Cleveland, C., C. & St. L. R. Co.,* recently decided, 11 I. C. C. Rep. 382. In the first of those cases we held that the defendant in making its classification need not distinguish between a blacking dauber brush with a wooden handle and one with an iron handle, and in the second that cotton was not entitled to a better rate simply because compressed to a greater density. In both these cases the article was the same. In the case before us the article in question is distinct. Leather scraps are not leather although composed of leather; they are treated as a separate commodity, are bought and sold as a separate commodity, and no reason appears to us why the classification of one should control the other, nor why it is unreasonable to require these defendants to continue the same distinction in that classification which has been in effect for years past without occasioning embarrassment.

An order will issue in accordance with the above views.

No. 715.

THE GRIFFIN GROCERY COMPANY
v.
THE SOUTHERN RAILWAY COMPANY and THE CENTRAL OF GEORGIA RAILWAY COMPANY.

Decided January 12, 1906.

Upon complaint of alleged unjustly higher freight rates from Chicago and St. Louis to Griffin, Ga., than to Macon, Americus, Albany or Dawson, Ga., it appeared that the three last-named cities are situated at considerable distances from Griffin; that while Griffin pays higher rates than those in force to such cities, there is no competition between them and Griffin for trade in common territory, and that Griffin's real difficulty is in the relation of rates to that point and Macon and Atlanta, between which points Griffin is located and which enjoy much lower rates than either Americus, Albany or Dawson. The rates from New Orleans are for a longer distance to Griffin than to Americus, Albany or Dawson. Competition creates dissimilarity of circumstances and conditions affecting the transportation of traffic from the points of shipment mentioned to Macon and Griffin.

Held: That under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case; and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect.

Robert T. Daniel for complainant.

Ed. Baxter and *Claudian B. Northrop* for Southern Railway Company.

Ed. Baxter for Central of Georgia Railway Company.

Report and Opinion of the Commission.

Clements, *Commissioner:*

This case involves the legality of defendants' freight rates from Chicago, St. Louis and New Orleans to Griffin, Ga., as compared with those from the same points of shipment to Macon, Albany, Dawson and Americus, Ga.

Complainant is a corporation engaged as a wholesale grocer at Griffin, Ga., in the shipment of groceries over defendants' lines as interstate traffic from Chicago, St. Louis and New Orleans to Griffin, and in the distribution of the same articles from Griffin to points in the surrounding territory.

Facts.

Griffin is the junction point of one line of the Central of Georgia Railway Company from Chattanooga and another line from Atlanta which extends south to Macon; and is on a line of the Southern Railway from McDonough southwest to Columbus. It is 43 miles south of Atlanta via the Central of Georgia and 46 miles by the Southern Railway via McDonough, and 60 miles northwest of Macon via the Central of Georgia Railway.

Macon is on the line of the Central of Georgia from Chattanooga and Atlanta to Savannah east, and another line south to Americus, Albany and Dawson and thence west to Montgomery; the Macon, Dublin & Savannah; the Georgia Railroad to Augusta; also the Macon & Birmingham from the west and the Southern Railway from Atlanta extending from Macon to the Atlantic Ocean at Brunswick. The Georgia Southern & Florida line runs from Macon via Cordele and Tifton to Florida.

Dawson is at the crossing of the Central of Georgia from Montgomery and the Seaboard Air Line from Columbus.

Americus is at the crossing of the Seaboard Air Line from Montgomery east and the Central of Georgia from Macon south and southwest, and another line of the Central of Georgia from Birmingham through Columbus to the east.

Albany is at the crossing of the Central of Georgia from Macon through Americus extending southwest, and the Seaboard

Air Line from Montgomery and Columbus. It is located on the Flint River and has railway connections south to the Gulf and east to Brunswick via the Atlantic Coast Line.

Atlanta, which under the present adjustment is the basing point for rates to Griffin, is served by the following lines: The Southern Railway from the northwest, the Seaboard Air Line from Augusta, the Central of Georgia from Savannah, the Southern Railway and the Central of Georgia from the south through Macon, the Southern Railway from Columbus the Atlanta & West Point from Montgomery and the southwest, the Southern Railway and Seaboard Air Line from Birmingham, the Western & Atlantic from Chattanooga, and the Louisville & Nashville (Atlanta, Knoxville & Northern) from Cincinnati (Western and Atlantic connection at Marietta, Ga.)

Over the lines above mentioned, and through the Chattanooga, Birmingham and Montgomery gateways, traffic from Chicago, St. Louis and New Orleans is carried to Atlanta, Griffin and the other towns named. Freight for some or all of those destinations may also be shipped from Chicago and points east of that city via Baltimore and other Northern Atlantic ports, passing through Charleston, Savannah and Brunswick over routes composed of rail and water and rail lines.

In the case of Brewer and Hanleiter, a firm of grocers in Griffin, against the Central of Georgia Railway Company and others, the question of rates from Cincinnati and Louisville to Griffin, as compared with rates to Macon, was fully presented to the Commission in 1897, and while the Commission held that the rates complained of in that case were in violation of the fourth section of the Act to regulate commerce, the circuit court for the southern district of Georgia, in which suit was brought to compel compliance with the order of the Commission, declined to enforce the order on the ground that the circumstances and conditions at Griffin and Macon were dissimilar and justified higher rates to the former point.

The rates from Chicago and St. Louis to Griffin and Macon are made on the same general basis and involve the same questions and principles concerning rate-making as the rates from

Cincinnati and Louisville to Griffin and Macon which were the subject of controversy in the former case.

The improvement of the Altamaha and Ocmulgee Rivers to Hawkinsville and Macon, and Flint River to Albany, undertaken by the general government, for which considerable sums have been appropriated and expended, will probably tend to increase the competitive conditions now existing at Macon and Albany; but at present there is practically no traffic by water to Macon, and only small steamers reach Albany.

The population of the cities involved in 1890 and 1900 (Federal census) was:

	1890	1900	Per Cent of Increase
Atlanta	65,553	89,872	37.2
Macon	22,476	23,272	3.5
Griffin	4,503	6,857	52.0
Americus	6,398	7,647	19.5
Albany	4,008	4,606	12.0
Dawson	2,284	2,926	28.0

It is estimated that Macon now has about 24,000 and Griffin between 8,000 and 9,000 inhabitants.

The following table shows the amount of capital invested in manufacturing establishments in the cities named, according to the census of 1900, except Dawson and Albany, for which figures are not given:

City	No. of Establishments	Capital Investment	Cost of Material	Value of Product
Atlanta	390	$16,045,156	$8,563,524	$16,707,027
Macon	182	5,076,005	3,741,167	6,495,767
Griffin	29	1,407,562	561,874	1,079,133
Americus	47	393,736	313,395	664,706

Much larger figures for Atlanta, Macon and Griffin are given as estimates for 1905 in the testimony.

The following are the distances from and to the various points concerned in the controversy:

DISTANCES

To / From	Atlanta	Macon	Griffin	Americus	Dawson	Albany
Chicago	733	821	776	874	898	910
Cincinnati	492	579	536	650	670	702
St. Louis	611	654	655	752	772	788
New Orleans	496	615	496	462	446	469

When the complaint in the Brewer and Hanleiter case was filed, September 1, 1896, rates per 100 pounds from Chicago to Macon ran from $1.47, class 1, to 36 cents, class D, while Griffin rates from Chicago were $1.83 in class 1 and 42 cents, class D. The rates in effect at the present time are as follows:

To Macon,	Class	1,	$1.38
"	"	D,	.34
To Griffin	"	1,	1.69
"	"	D,	.40

Like reductions were also made at the same time in rates from St. Louis. Rates on September 1, 1896, were:

From New Orleans to Macon,	Class	1,	$1.03
Do.	"	D,	.22
New Orleans to Griffin,	"	1,	1.39
Do.	"	D,	.28

The present rates from New Orleans are as follows:

To Macon,	Class	1,	$ .99
"	"	D,	.20
To Griffin,	"	1,	1.30
"	"	D,	.26

Previous to February 1, 1905, the rates to Griffin, Atlanta and Macon from the east were the same, but at that date rates, first class, were reduced 9 cents to Atlanta and Macon and reductions were also made on other classes, while no change was made in the rates to Griffin. All rates from the north and west to Griffin are made by adding the local rate from Atlanta to Griffin to the through rate to Atlanta.

Under existing rate to Griffin wholesale dealers are able to carry on a jobbing trade within a radius of 25 to 30 miles out from Griffin in competition with merchants and shippers at other points, but such competition is affected and greatly restrained under the lower rates in force to Macon and Atlanta. It is claimed by complainant that if granted Macon rates their sales would be more than doubled and that Griffin dealers could extend their trade into a territory fifty or more miles around Griffin. The Macon rate in force at Griffin would undoubtedly tend to enlarge the distribution of trade from that city.

Traffic from Chicago to this section has been carried upon combination rates composed of those to the Ohio River crossings and the established rates from Cincinnati or other Ohio River points to these destinations, and, therefore, this traffic is subject to the same conditions as rates and traffic from Cincinnati and Louisville, which were the subjects of controversy and investigation in the Brewer and Hanleiter case. The same relative differences in rates from Chicago and St. Louis exist now as then, and have been maintained for the entire period.

Both Macon and Griffin have the Central of Georgia and the Southern from Atlanta, with the facilities furnished by all the railways reaching that point; both have the line of the Central of Georgia from Chattanooga; both have lines from Columbus and the advantages of western connections at that point from Birmingham and Montgomery. Macon has the Macon & Birmingham road from the west through La Grange direct, while Griffin has connection with the same line through the Central of Georgia at Newnan. In other respects Macon has better facilities for transportation. There is competition between the two defendants for Griffin traffic, but the additional railway facilities at Macon, and, by the Southern and the Macon and Birmingham roads, more direct connection with northern and western points of origin, result in considerably greater competition at Macon than at Griffin.

There has been no material change in the circumstances and conditions affecting Macon and Griffin traffic since the determination of the Brewer and Hanleiter case.

The following tables show the rates in force from Chicago and

St. Louis, April 18, 1900, and from New Orleans **March 30, 1901**, and the rates in effect at the present time.

TO GRIFFIN

From Chicago		1	2	3	4	5	6	A	B	C	D	E	H	Per Bbl. F
September	1, 1896	183	159	136	111	92	74	56	61	46½	42	82	94	85½
April	18, 1900	183	159	136	111	92	74	56	61	46	41½	82	94	84½
January	12, 1906	169	150	130	104	86	67	56	59	44½	40	82	89	81½

TO DAWSON

Aprember	1, 1896	o179	155	132	108	90	72	54	63	48½	44	82	91	89½
tielSp	18, 1900	167	143	121	98	82	67	49	58	41½	37½	78	80	75
January	12, 1906	o158	137	118	93	78	62	49	51	41	37	78	75	74

TO AMERICUS AND ALBANY

April	18, 1900	167	143	121	98	82	67	49	58	41½	37½	78	80	75
January	12, 1906	158	137	118	93	78	62	49	51	41	37	78	75	74

TO GRIFFIN

From St. Louis														
April	18, 1900	171	148	131	108	89	72	51	57	40½	34	77	89	73½
January	12, 1906	157	139	125	101	83	65	51	55	41½	35	77	84	75½

TO AMERICUS, DAWSON AND ALBANY

April	18, 1900	155	132	116	95	79	65	44	49	39	33	68	75	70
January	12, 1906	146	126	113	90	75	60	44	47	38	33	68	70	66

oBased on Cincinnati, O.

TO GRIFFIN

From New Orleans		1	2	3	4	5	6	A	B	C	D	E	H	Per Bbl. F
September	1, 1896	139	121	107	90	73	58	40	45	32½	28	65	75	57½
March	30, 1901	139	121	107	90	73	58	40	45	32½	28	65	75	57½
January	12, 1906	130	116	104	85	69	53	40	43	30½	26	65	70	53½

TO DAWSON

September	1, 1896	No through rates

TO AMERICUS, DAWSON AND ALBANY

From New Orleans														
March	30, 1901	123	105	92	77	63	51	33	27	28	24	56	61	48
January	12, 1906	119	103	92	74	61	48	33	35	27	23	56	56	46

Defendants refer to the fact that the rates to Dawson are made in compliance with an order of the Commission. The case in which this order was made was the Dawson Board of Trade v. The Central of Georgia Railway Company and the Georgia & Alabama Railway Company. Complaint was made of rates from Cincinnati, Chattanooga, and Tennessee to Eufaula, Georgetown, Americus and Albany being lower than to Dawson, thereby giving the other towns an undue preference. Americus, Albany and Dawson occupy the terminal points of a "Y" of which Americus is at the base, to the northeast, and Dawson and Albany to the southwest and southeast respectively, the distances between them being as follows:

Americus to Albany, 36 miles;
Americus to Dawson, 27 miles;
Albany to Dawson, 15 miles.

They each had the Central of Georgia Railway from Atlanta, Birmingham and Montgomery, and the Seaboard Air Line from Birmingham and Montgomery—practically the same facilities

for commerce from all points north and west; and the Commission concluded that they should have the same rates from northern and western points. The railway facilities and connections at these points from the north and west are practically the same now as when the Dawson case was decided in 1899.

Griffin is situated about 60 miles north of Macon, 131 miles north of Americus, 158 miles north of Dawson, and 167 miles north of Albany. These distances are via the Central of Georgia Railway. There is no such relative situation presented here as between Griffin and the three towns mentioned as there was in the Dawson case as between that point and Americus and Albany. Indeed it does not appear that Griffin competes with Americus or Albany or Dawson, or that it could do so to any extent if it had the somewhat lower rates to those cities, for Macon, with still lower rates, lies between those towns and Griffin.

It therefore seems that Griffin's real difficulty is found in the relation of its rates and those to Macon or Atlanta. It is true that traffic via the Chattanooga and Atlanta gateways from points north of the Ohio goes through Griffin when consigned over the Central of Georgia road to Americus, Albany or Dawson, and by that line Griffin is nearer to the points of shipment by the distances above stated. But it is also true that traffic may come from the north via other lines or via the Birmingham or Montgomery gateways to Americus, Albany or Dawson which does not pass through or near Griffin. In view of the competitive situation, and the fact that Griffin cannot be said to be in direct competition with these three towns, no finding that Griffin is injured by the present rate adjustment is warranted in this proceeding. Situated as Griffin is between Macon and Atlanta, which enjoy lower rates than those to Griffin, and lower than those to Americus, Albany or Dawson, its difficulty in trade competition is clearly with such lower rates to Macon and Atlanta, and, as before stated, there is nothing in this case to indicate substantial change in the conditions at Macon and Griffin which were shown in the Brewer and Hanleiter case. Respecting the rates from New Orleans, the distance to Griffin is greater than to Americus, Albany, Dawson or Macon, and there are no other conditions shown which call for a finding of relative injustice

as against Griffin in the relation of rates from New Orleans to these localities.

Conclusions.

Following the ruling of the United States circuit court in *Brewer et al.* v. *Central of Ga. R. Co.* 84 Fed. 258, and that of the Supreme Court of the United States in later cases, and applying the law as thus construed to the facts presented in the record before us, we find no basis for an order condemning the rates in issue for undue discrimination. Under those decisions the dissimilarity shown to exist in conditions at Macon and Griffin is such as to leave no room for a finding of undue prejudice against Griffin or a violation of the long and short haul clause. It may be, however, that these rates to Griffin, which are all made by combination of the through rates to Atlanta and the local charges from Atlanta to Griffin, are unreasonable, but the evidence in this case is chiefly directed to the question of preference and discrimination as between localities, and is insufficient to warrant any finding or conclusion upon the reasonableness of the charges to Griffin.

An order of dismissal without prejudice is directed.

No. 817.

W. SCHEIDEL & COMPANY
v.
CHICAGO & NORTHWESTERN RAILWAY COMPANY and UNION PACIFIC RAILROAD COMPANY.

Submitted January 8, 1906. Decided January 18, 1906.

The "Scheidel outfit" is an electrical apparatus consisting of a so-called Ruhmkorff coil, an interrupter, a small rheostat and two switches, fitted to a strong table. The parts are detachable and are shipped in separate boxed packages, except the table, which is crated. This outfit, which transforms an electrical current of low voltage into one of extremely high voltage, is used in medical and scientific work, including the use of the x-ray, and also in wireless telegraphy and in chemical works. The Western Classification places x-ray apparatus and scientific or medical instruments in double first class, and electrical apparatus, n. o. s., in first class. Complainant contends that their outfit should be treated as an ordinary electrical appliance and carried at first class rates. *Held:*

That under conditions now governing the manufacture and use of complainant's outfit, such outfit is properly classified by defendants with the x-ray and medical or scientific apparatus as double first class, and is not entitled to a first class rating with dynamos, transformers and other electrical machinery; but no opinion is expressed upon the justice of the first class rate for such machinery.

W. Scheidel for complainant.
S. A. Lynde for Chicago & Northwestern Railway Company.
B. B. Davis for Union Pacific Railroad Company.

Report and Opinion of the Commission.

Prouty, *Commissioner* :

The complainant is located in the city of Chicago where it

manufactures among other things what it styles the "Scheidel outfit" and which it sells in different parts of the United States, mostly west of Chicago. The Western Classification places electrical appliances, n. o. s., when boxed for shipment, in first class. X-ray apparatus and scientific instruments are classified as double first class. The defendants classified the Scheidel outfit as double first class and the question presented for determination is whether that classification is correct or whether the apparatus should be treated as an electrical appliance and be given the first class rating.

The Scheidel outfit consists of what the complainant styles a Ruhmkorff coil standing upon a strong table, and an interrupter which stands upon a shelf fastened to the legs of the table near the floor. Upon the table itself are fastened a small rheostat and two switches.

These three parts are readily detachable from one another, and are presented for shipment in separate packages, the Ruhmkorff coil and the interrupter being securely boxed, while the table is crated. The Ruhmkorff coil consists of a series of iron and copper coils and cores contained in a strong wooden box. When the coils have been properly assembled the box is filled with a liquid which becomes when cold a semi-solid. Two binder posts project above the top of the box. To prepare for shipment this box is placed inside a rough box of sufficient size to enclose the binder posts and is securely fastened in position. The package is about five feet long, two feet wide and thirty inches high and weighs five hundred pounds.

The interrupter consists of a small dynamo and an iron can, which when set up and ready for use is filled with liquid and contains certain tubes and wires, all mounted upon a wood base. It is also securely boxed when offered for shipment, and weighs rather less per cubic foot than the Ruhmkorff coil. The table is crated and does not differ from any other table of the same sort when presented for shipment, except that the addition of the switches and the rheostat to the table about double its value.

None of the apparatus can be termed fragile. None of it

is liable to damage in shipment. The complainant testified that although he had sent many of the coils to different parts of the United States no one had ever been injured in transit to his knowledge. In one or two instances the interrupter had been injured and once or twice the table had been damaged, but this was evidently due to improper and rough handling.

The value of the Ruhmkorff coil varies with the size. A twenty inch coil which would make a package of the size above mentioned, sells for $375; the table as equipped for about $60, and the interrupter for $75.

Without attempting to discuss the construction of the Ruhmkorff coil it may be stated in brief that this piece of apparatus, as manufactured by the complainant produces, by the use of an electrical current of low voltage, an induced current of an extremely high voltage, from 60,000 to 150,000 volts.

The function of the interrupter is to break this current at frequent and regular intervals.

The apparatus of the complainant is available for any purpose which requires a current of extremely high tension. The testimony showed that it was mainly employed in the production of the x-ray but it is also extensively used in medical and scientific work. Of late it has come to have a practical use in connection with wireless telegraphy and in chemical works.

The x-ray and the high potential current produced by the apparatus of the complainant can also be produced by various other means. There is what is known as the static apparatus, which is largely constructed of glass and which is much more fragile and bulky than the outfit of the complainant. This was until recently classified as double first class but is now classified as three times first class. No question is presented here as to the propriety of that classification. The defendants in their answers seem to claim that the outfit of the complainant is in reality static electrical machinery but that claim was abandoned upon the hearing. There is no analogy whatever between the Scheidel outfit and the static machinery used for the production of the x-ray except in the result. There are, however, several other instruments producing high potential currents whether for the x-ray or for other purposes somewhat

similar to the Scheidel outfit, some of which are more fragile and less desirable freight than the outfit of the complainant.

Under the Western Classification x-ray apparatus is classified as double first class and that is also the rating of scientific instruments. Dynamos, motors, transformers and electric machinery in general are first class. Electrical appliances, n. o. s., are also first class. It did not clearly appear just what would be included in the last definition, but one witness testified that according to a recent ruling of the classification committee an electric heater would be considered as an electrical appliance. It seems quite probable that under this classification articles may be transported as first class which in point of bulk, value, liability to damage, etc., are no more desirable and probably less desirable freight than the Ruhmkorff coil of the complainant. We are, however, of the opinion as matter of fact that the Scheidel outfit is properly classified as x-ray apparatus or as a scientific instrument and that such apparatus may properly bear a higher rate than is applied to ordinary electrical apparatus, which moves in much larger quantities, is manufactured and sold upon a much narrower margin and which cannot properly bear as high a transportation charge as such apparatus as that made by the complainant. Of this there can be no reasonable doubt when the Scheidel outfit as a whole is considered. The table without the addition of the electrical portions regularly takes the double first class rate and the Ruhmkorff coil is the only part of the outfit for which a better rate could be seriously claimed.

Conclusions.

No more embarrassing questions are presented than those which arise upon the classification of a particular article. This is due to the fact that while the classes must be comparatively few the articles embraced are almost innumerable and of infinite variety. It is perfectly evident that there is no reason why ordinary electrical machinery should be transported at the same rate which applies to the carriage of electrical contrivances used in medical and scientific work, and yet it is almost im-

possible to draw the line of demarcation between the two and to say with confidence to which class certain parts of the apparatus of the complainant belong. We have found that the "Scheidel outfit" should properly be classified as x-ray apparatus, or as apparatus used for medical and scientific purposes; but if in the future the Ruhmkorff coil manufactured by the complainant should come to be used extensively for commercial purposes; if some demand should arise for the extensive use of a piece of mechanism producing the high tension currents which this does, it might easily be true that the conditions surrounding the manufacture and use of that piece of apparatus would be such as to render it more nearly akin to the present high tension transformer and it might then be entitled to the same rating. We consider here only the Scheidel outfit as a whole and in reference to its present use.

It should also be noticed that we are comparing here the Scheidel outfit with commercial electrical apparatus. No opinion is expressed as to whether the classification of dynamos, transformers and other electrical machinery as first class is just. We simply hold that the Scheidel outfit is not entitled to the same rating which is applied to such electrical machinery.

The complaint is dismissed.

No. 767.

S. J. & S. CANNON

v.

MOBILE & OHIO RAILROAD COMPANY.

Decided January 15, 1906.

1. In the adjustment of rates as between places on its line, a carrier cannot rightfully ignore the relative cost of the respective services, but there are other matters equal in importance to that of the cost of service, and often more controlling, which must also be considered, and this includes competition of carriers and competition of markets.
2. It is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate, and these are to be considered in connection with the many other factors that enter into the adjustment of rates, but it does not necessarily follow that a rate is unreasonable because on the same or another road a particular kind of traffic is hauled a greater distance from a different point of origin at the same or a less rate.
3. Rates on flour from Louisville and Evansville by the Southern Ry. to Berry, Ala., on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo, Ala., on the line of the Mobile & Ohio, are less than those of the Mobile & Ohio from Ava and Cairo, Ill., to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter, and much greater than that from St. Louis by the Mobile & Ohio. *Held:* that these facts do not warrant a conclusion that the flour rates from St. Louis, Ava and Cairo to Gordo are unreasonable.
4. Defendant's published tariffs to various points in Alabama, including Gordo, as well as those of the Louisville & Nashville, Southern, and Illinois Central, to some points in Alabama, show in some instances charges per barrel of flour considerably less than double the rate per 100 pounds in sacks, while in other cases, as in the instance of Gordo, the barrel rate is materially in excess of double the rate per 100 pounds in sacks, and this notwithstanding the weight of a barrel of

flour is substantially double the weight of flour as shipped in sacks. The rates on sack flour are commodity rates, and the evidence leads to the inference that shipments of flour in barrels would be given double the rate on flour in sacks, although this may not correspond to the actual published rate on flour in barrels. *Held:*

That it is manifestly contrary to law, and leads to confusion, for one line of rates to be retained in published tariffs while others are in fact used on actual shipments, and that so long as carriers in Southern Classification territory deem it necessary to retain class F in their classifications and publish rates applicable thereto, including flour in barrels, and at the same time publish commodity rates on the same article carried in sacks, there should be uniformly a just relation in such rates. Case retained with respect to the rates in question on flour shipped in barrels, unless same are changed to conform relatively to those applied to shipments in sacks.

Daniel Collier for complainants.
Perkins Baxter and *S. R. Prince* for defendant.

Report and Opinion of The Commission.

Clements, *Commissioner:*

The complaint and answer put in issue the reasonableness of the rates on flour in carload lots from St. Louis, Missouri, Ava and Cairo, Illinois, to Gordo, Alabama, on the defendant's railway, which rates are alleged to be 27 cents per hundred pounds from St. Louis and Ava and 22 cents from Cairo. By the averments in the petition and the proofs submitted by the complainants it appears that their contention is based upon a comparison of rates on the same article by other lines from Evansville, Ind., and Louisville, Ky., to Gordo and other points in Alabama on the line of the defendant road and others, particularly the Southern Railway. Berry, a point on the last-named road is specially referred to as illustrative. It is contended by them that the rates from Evansville and Louisville by the Southern Railway are 20 cents per hundred pounds to Gordo, and the same by the Southern to Berry, Alabama, and other points on that Railway not far distant from Gordo; that the distances from Evansville and Louisville to said points of destination are much greater than the distances from St. Louis, Ava and Cairo to Gordo by the Mobile & Ohio, and that the rates of the de-

fendant ought not to be more from St. Louis, Ava or Cairo to Gordo than those of the Southern Railway and the Louisville & Nashville from Evansville and Louisville to Berry and of the former to Gordo.

FACTS.

Gordo is a local point 37 miles southeast of Columbus, Miss., on the Montgomery Division of the Mobile & Ohio Road, which leaves the main line at Artesia, Mississippi, and runs in a southeasterly direction to Montgomery, Ala., a distance of 179.6 miles. This division in the reverse direction and the Southern running west from Birmingham converge at Columbus, Mississippi. Berry is a local point on this line of the Southern Railway, 58 miles east from Columbus. The distance across the country between Gordo and Berry is about 30 miles.

In the following statements the rates on flour in sacks are in cents per hundred pounds, while those on barrels are in cents per barrel. The distances and rates by defendant's road from St. Louis, Ava and Cairo to Gordo are as follows:

FROM ST. LOUIS, MO.			AVA, ILL.			CAIRO, ILL.		
Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.
478	27	68	400	27	68	324	22	54

Following is a statement of rates and distances from points indicated to Gordo by the Southern and the Illinois Central:

(SOUTHERN RAILWAY).

FROM ST. LOUIS, MO.			EVANSVILLE, IND.			LOUISVILLE, KY.		
Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.
804	27	68	652	20	54	530	20	54

(ILLINOIS CENTRAL).

FROM EVANSVILLE, INDIANA.			LOUISVILLE, KENTUCKY.		
Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.
595	27	54	674	27	54

The rates and distances from the points indicated below to Berry by the lines named are as follows:

FROM ST. LOUIS, MO.			EVANSVILLE, IND.			LOUISVILLE, KY.		
(SOUTHERN RAILWAY).								
Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.
800	27	54	648	20	40	526	20	40
(LOUISVILLE & NASHVILLE).								
604	33	66	439	26	52	559	26	52

FROM CAIRO, ILL.			EVANSVILLE, IND.			LOUISVILLE, KY.		
(ILLINOIS CENTRAL).								
Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.	Distance (Miles)	In Sacks	In Bbls.
455	23	38	601	23	38	680	23	38

A barrel contains about 200 pounds of flour and is generally accepted and treated as of that weight by carriers and shippers for transportation purposes.

Flour in carloads is usually loaded by the shipper and unloaded by the consignee. The rates of the defendant and other roads herein referred to on flour in barrels are those applicable to Class F in Southern Classification. Those on flour in sacks are special or commodity rates and on the traffic here involved the latter are less per hundred pounds than the former. Complainants prefer Illinois flour to that produced at Evansville or Louisville because they regard it as a better grade. They shipped within the period of ten or eleven months next preceding the hearing of this case in July, last, about thirty-five carloads, nearly half of which moved from Ava, Illinois, all the way over the Mobile & Ohio and upon this the commodity rate was applied. Slightly more than half of all their shipments moved from Evansville and Louisville, most of the way either by the Louisville and Nashville, the Southern, or the Illinois Central, all of which reach both Evansville and Louisville. The Mobile & Ohio reaches neither of these cities and shipments

from either are turned over by the initial carrier to the Mobile & Ohio at some junction point to complete the haul to Gordo, which is reached only by the Mobile & Ohio. This road does not publish through rates from either Louisville or Evansville to Gordo. Such through rates as are established from these points are published by the initial lines therefrom—the Southern, the Louisville & Nashville and the Illinois Central—the Mobile & Ohio being named as party to such through rates only by the Southern Railway. It was shown that there is no arrangement between the Mobile & Ohio and either of these initial carriers for a division of such through rates on any other basis than the exaction by it of its locals from the junctions where it may receive the traffic to destination, and it has in its general practice adhered to this basis. It was shown that the complainants presented a claim to the agent at Gordo on a shipment from Evansville of one carload by the Louisville & Nashville and the Mobile & Ohio, upon which a rate of 27 cents had been collected; that the claim was made on basis of a rate of 20 cents—that prevailing by the Southern Railway and allowed. The voucher came, however, from the Louisville & Nashville, and it was not shown that the Mobile & Ohio participated therein. It was also shown that with respect to one other shipment by the same roads from the same point of origin, after the exaction of the rate of 27 cents, claim was made by complainants on the basis of a rate of 20 cents and that this was allowed by the two roads. The Mobile & Ohio participated in this to the extent of accepting its less local rate from Tuscaloosa than that applying from Montgomery, to which last place the Louisville & Nashville brought the shipment, and from which the Mobile & Ohio moved it to Gordo. Other claims of a similar character made by complainants were referred to in the testimony but they have not been allowed. The Mobile & Ohio road refused such claims or participation therein other than on the basis of receiving its local rates, as before stated, except in the case above mentioned, and in that instance the allowance was not in accordance with the published rates by the lines over which the traffic moved. The rate by the Louisville & Nashville was then and now is 20 cents per hundred pounds from Evansville to Tuscaloosa and the same to

Montgomery, which was exactly the through rate allowed in this adjustment on the shipment to Gordo, so the result was that the local rate of the Mobile & Ohio in this instance was practically absorbed by the Louisville & Nashville and Gordo was put upon the same footing as Montgomery and Tuscaloosa. This left to the Louisville & Nashville only 4 cents per hundred pounds for hauling the freight from Evansville to Montgomery, a distance of 470 miles.

Throughout the country, except within the territory of the Southern Classification, flour in sacks or barrels, whether carried at commodity or class rates, is rated by the hundred pounds, whether in carloads or less, and not by the barrel. Even in Southern Classification Territory, where alone the class F which covers only flour and certain other grain products prevails, the rates by the barrel are almost uniformly either precisely, or about double those on the hundred pounds in sacks.

CONCLUSIONS.

While in the relative adjustment of rates as between places on its line a carrier cannot rightfully ignore the relative cost to it of the respective services rendered by it, and since it ordinarily costs more to haul freight a longer distance than a shorter one, the carrier cannot rightfully ignore substantial differences in distance where all other circumstances and conditions are equal, or substantially similar, there are other matters of equal importance to that of cost of the service and often more controlling which must also be considered. Among these is competition both of carriers and of markets. The greater the inequality or dissimilarity in other potent circumstances or conditions the less controlling becomes the matter of relative cost. It therefore follows that in many cases even on the same road the relation of rates as between different points cannot be fixed altogether upon relative distances. In addition to the controlling reasons which prevent a uniform application of distance in the adjustment of rates on the same road there are others even more powerful against testing the reasonableness of the rates of one carrier by those of another on the basis of distance alone. It is competent to compare rates and dis-

tances on different roads in dealing with such an issue, and these are to be considered in connection with the many other factors that enter into the adjustment of rates, but it does not necessarily follow that a rate is unreasonable because on the same or another road the same article is hauled a greater distance from a different point of origin at the same or a less rate.

The distances from Evansville and Louisville to Gordo and other points on the Mobile & Ohio road in Alabama and to Berry and other places on the Southern in the same territory are somewhat greater by any of the lines than the distances from St. Louis to the same points by the Mobile & Ohio and considerably greater than the distances from Ava and Cairo. The carriers leading south from the first named cities, if they are to carry flour to these destinations in Alabama, must, probably, offer rates not higher than those from equally favorable and nearer by points of production whether on the Mobile & Ohio road or elsewhere, such as Ava and Cairo, and to do so they must, of course, disregard to a great extent the differences in distance. This course may be beneficial alike to the producers at the points of origin and the consumers in Alabama and to the carriers from Louisville and Evansville. But though the rates made by the Southern from the last named two cities to Berry on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo on the line of the latter in the manner stated in the findings are less than those of the Mobile & Ohio from Ava and Cairo to Gordo, this alone is by no means conclusive or satisfactory evidence that the latter rates are unreasonable. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter and much greater than that from St. Louis by the latter road and this is true largely because the line of the Southern is a very circuitous one. The fact that the Mobile & Ohio road refuses to prorate with the carriers from Evansville and Louisville on shipments to Gordo and other local points on its line on any other basis than the allowance to it of its locals from the several junction points, except as showing what is left to the initial carriers which publish through rates

from those cities to Gordo and other points which they do not reach, is immaterial in this case, since the rates from Evansville and Louisville are not in issue. It would be different if these rates were in issue for in that event it would be material if they were believed to be unreasonable as through rates to inquire into the reasonableness of the Mobile & Ohio Railroad's locals from the Junction points as divisions of the through rates. But in this case the only issue is as to the through rates over the Mobile & Ohio from St. Louis, Ava and Cairo to Gordo. The through rates from Louisville and Evansville by the other lines and in connection with the Mobile & Ohio have only been presented in this case as evidence for comparison with the rates in issue.

We do not express any opinion as to the rates herein referred to from St. Louis, Evansville and Louisville published by the Louisville & Nashville, the Southern and the Illinois Central roads because these rates are not in issue and the carriers named are not parties to this proceeding and were not heard. These have been stated for purpose of comparison only, such comparison being the main reliance of the complainants in support of their contention that the rates in question on the Mobile & Ohio Road are unreasonable. There is no other evidence presented in the record upon the issue of the reasonableness of these rates except those offered, as stated, for comparison and the adjustment of the particular claims wherein certain refunds were made, as stated, but not upon the basis of the published tariffs by the lines over which the traffic moved. We do not feel justified upon this evidence alone in condemning the rates in question on flour in sacks as unreasonable.

We have seen, however, that the defendant's published rates on flour in barrels are, from St. Louis and Ava to Gordo, 68 cents per barrel, and from Cairo 54 cents. These rates from St. Louis and Ava are practically equivalent to 34 cents per hundred pounds and from Cairo 27 cents, since a barrel contains about 200 pounds. In the testimony and argument there is no reference to other rates than those which by the tariffs are shown to apply to flour in sacks only although the witnesses frequently referred to a rate just double that amount as applying on flour by the barrel, but, as shown by the published tariffs,

the differences between rates upon flour in sacks and in barrels is as above stated. It does not seem probable that justification will be attempted for this excessiveness in the published rates on flour in barrels over those upon the same article in sacks, and it is fairly inferable from the testimony and arguments presented that these higher rates upon flour in barrels have not been applied on the shipments to Gordo. It seems probable that not only the defendant in this case but the other carriers referred to have in the printing and publication of their tariffs given attention mainly to the commodity rates, and that by oversight or neglect they have failed to make corresponding changes from time to time in the published rates applying to class or barrel shipments. However this may be, we do not feel justified in dismissing this proceeding without a correction of the published rates per barrel so that they will not exceed about the equivalent of the commodity rates per hundred pounds in sacks, or without some satisfactory explanation or justifying reason for such disparities between the class and commodity rates as are shown, and which are at wide variance with the relation of rates on flour in barrels and in sacks in all other parts of the country. It appears that in the rates to other points reached by defendant's road and the other lines mentioned similar disparities and great lack of uniformity exist in the published tariffs in the same respect. In some instances the rate per barrel is considerably less than double the rate per hundred pounds in sacks, while in other cases, as in the instance of Gordo, the barrel rate is materially in excess of double the rate per hundred pounds in sacks. Without undertaking in any degree to pass upon the lawfulness of the rates mentioned in this respect, we do not deem it out of place, although the carriers mentioned, other than the Mobile & Ohio, are not parties to this proceeding, to call their attention as well as that of the defendant to this state of their published rates on flour in barrels and sacks, respectively, to points in this particular territory to the end that such changes or corrections in this respect as are proper may be made by them. It is manifestly contrary to law and leads to confusion for one line of rates to be retained in published tariffs while others are in fact used on actual shipments, and so long as the carriers in Southern

Classification Territory deem it necessary to retain class F in their classification, and published rates applicable thereto and at the same time publish commodity rates on the same articles carried in the one case in barrels and in the other in sacks, there ought uniformly to be a just relation in these rates.

This case will be retained for further hearing with respect to the rates in question on flour shipped in barrels, unless the same are changed so as to conform relatively to those applying to shipments in sacks.

No. 718.

F. J. HOERR
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Decided February 9, 1906.

In October, 1902, complainant shipped over defendant's road and connections a carload of potatoes from Good Thunder, Minn., to Washington, D. C., on which the rate was 46 cents per 100 pounds, and another carload of potatoes from Mankato, Minn., to Scranton, Pa., on which the rate was 50.2 cents per 100 pounds. As there were no through rates in force, the Good Thunder shipment was moved at the combination of the published rates to and from Chicago, and upon the Mankato shipment there was $13.39 overcharge above the published combination rate of 47 cents. In 1889 the "Soo Line" put in through rates on potatoes from St. Paul and Minneapolis to New York, Philadelphia and Boston of 40 cents per 100 pounds, which were met by the American lines. The "Soo Line" kept the rate in force until April, 1898, when it was withdrawn, and in June, 1898, all lines, including the "Soo Line" put in force rates of 37 cents to New York, 40 cents to Boston, 35 cents to Philadelphia, and 34 cents to Baltimore. These rates were not effective from Mankato or from Good Thunder, the first station south of Mankato. By most lines the St. Paul and Minneapolis rates to the eastern points mentioned applied as maximum rates to intermediate points. From September, 1900, to April, 1903, the Chicago Great Western had in force a rate on potatoes from Mankato to eastern seaboard destinations 2 cents higher than from St. Paul, and apparently this rate was also used over the Chicago & Northwestern line. Complainant cannot handle potatoes at Mankato or Good Thunder for these eastern shipments under the Chicago rate combination. At the time of the shipments above specified complainant was shipping over the Great Western and Northwestern at 2 cents above the St. Paul rate. Though the through rates from St. Paul are the result of competition, they have been long in force as normal rates, are

reasonable and just, and as high as could properly be applied to this traffic. *Held:*

1. That defendant's rates on potatoes in carloads from Mankato and Good Thunder to Washington, Scranton, and other eastern destinations, are unreasonable and unjust, and that the St. Paul rate may also be used, for the purposes of this case, as a standard of comparison.

2. That reasonable and just rates on potatoes in carloads from Mankato and Good Thunder to Washington and Scranton would be 39 cents to Scranton and 38 cents to Washington, and said rates would be 4 cents above the rates from St. Paul; and defendant is also recommended to put in corresponding rates from Mankato and Good Thunder to the various eastern destinations.

3. That complainant is entitled to reparation for excessive rates on the shipments in question.

H. L. & J. W. Schmitt for complainant.
F. W. Root for defendant.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

In October 1902 the complainant shipped a carload of potatoes by the line of the defendant from Good Thunder, Minnesota, to Washington, D. C., weighing 31,350 pounds upon which he was compelled to pay a rate of 46 cents per hundred, aggregating $144.21. During the same month he shipped a second carload of potatoes from Mankato, Minnesota, to Scranton, Pennsylvania, containing 43,400 pounds upon which freight charges were assessed at the rate of 50.2 cents per hundred pounds, in all $217.87. Good Thunder is the first station south of Mankato on the line of the defendant going towards Chicago.

At the time of these shipments there was no published through rate by the defendant line from either Good Thunder or Mankato to the eastern seaboard, the rate being determined by the combination upon Chicago. Under the Western Classification potatoes are classified in class C, while under the Official Classification they are fifth class. There were in effect no commodity rates on potatoes either to Chicago or from Chicago to the east, and these shipments moved under the regular class rates, which were in case of the first shipment, from Good Thunder

to Chicago, 19 cents and from Chicago to Washington 27 cents, or 46 cents from Good Thunder to Washington. The charges upon this carload were, therefore, properly assessed according to the published schedule.

The class rate from Mankato to Chicago was 19 cents and from Chicago to Scranton 28 cents, making a through rate from Mankato to Scranton of 47 cents. According to the published schedule the total freight upon that car should have been $203.98 or $13.89 less than the sum actually collected. It did not appear for what reason the overcharge in question was made, nor whether the defendant ever received any portion of the excess above the published rate.

While there was no question but that the published rates by the line of the defendant were as above stated, the complainant insisted that these rates were unjust and unreasonable, that the rate from Good Thunder to Washington should have been 36 cents per hundred pounds and from Mankato to Scranton 37 cents per hundred pounds, and that he should be awarded reparation by the amount of the difference between the freight actually collected and what would have accrued had the defendant published and put in effect the last-named rates.

In 1890 this Commission held in what is known as the *Mankato Case,* 4 I. C. C. Rep. 79, 3 Inters. Com. Rep. 115, that rates from Chicago to Mankato ought not to exceed those to Waterville, St. Paul, Minneapolis and corresponding points by more than 10 per cent. While the schedule of rates in effect when the complaint was filed had established a much wider difference than this the Mankato rates had been reduced previous to the publication of the decision of the Commission so that the relation then in effect was substantially that which the Commission approved. This relation between Mankato and St. Paul has been observed in the main ever since both upon rates from Chicago to Mankato and St. Paul and upon those in the reverse direction. The class rate on potatoes from St. Paul to Chicago is 17 cents and in compliance with the above rule the rate from Mankato to Chicago has been established at 19 cents, two cents above the St. Paul rate. In case of most commodities, the notable exception being grain and the

products of grain, rates from St. Paul to the Atlantic Seaboard are made by the combination on Chicago. Potatoes, however, take a joint through rate from St. Paul to New York of 37 cents a hundred pounds, which is less by 10 cents per hundred pounds than the Chicago combination. The contention of the complainant is that the defendant should apply the two cent differential to this joint potato rate to the Atlantic Seaboard in the same manner that it is applied to the local rate from St. Paul to Chicago, thus giving Mankato a rate of 39 cents to New York, which by the application of the seaboard differentials would make the Washington rate 36 cents and the Scranton rate 37 cents. The real question, therefore, is whether carriers should extend to Mankato the through rate which they have established from St. Paul. The defendant replies that this ought not to be, because the St. Paul rate has been made by it and other American lines to meet the rate from St. Paul to the Atlantic Seaboard by the Canadian Pacific Line; that this competitive condition, which exists at St. Paul and does not exist at Mankato, absolves it from its obligations to maintain the relation in rates between St. Paul and Mankato which ordinarily obtains.

The Minneapolis, St. Paul & Sault Ste. Marie Railway, ordinarily known as the "Soo Line," extends from Minneapolis and St. Paul northeasterly to Sault Ste. Marie, Michigan. It there connects with the Canadian Pacific Railway, which runs easterly through Canada and finally connects in the eastern part of the United States at different points with various American lines of railway, by which access is had to the Atlantic Seaboard. Many lines of railroad extend from St. Paul to Chicago, where they connect with numerous other lines extending from Chicago to the Atlantic Seaboard. Traffic can therefore pass from St. Paul to New York and corresponding points either by the Canadian line, leaving St. Paul over the Soo or by the American lines from St. Paul to Chicago and thence east. The distance from St. Paul to New York is somewhat greater by the short Canadian line than by the short American line, being 1406 in the former as against 1321 in the latter case. The distance to Boston would be about the same by the Canadian and American routes.

The testimony was meager as to the general conditions surrounding this particular traffic, but it did fairly appear that potatoes were extensively grown in Minnesota, especially to the northwest of St. Paul, and that large quantities of this vegetable were shipped east through St. Paul. This traffic seems to reach St. Paul mainly by the Soo Line, which extends west as well as east, and by the Great Northern and Northern Pacific. Traffic reaching St. Paul over the Soo may be carried east either by that line or by its competitors. That arriving by the Great Northern and Northern Pacific necessarily goes to some other line at St. Paul. It was said that the amount of this traffic was large, reaching 8,000 carloads annually.

Mankato is a town of some thirteen or fourteen thousand people, situated about 100 miles to the southwest of St. Paul. It is the most considerable shipping point in that section next to St. Paul and Minneapolis. Potatoes are not grown in that vicinity to the same extent that they are farther north, but considerable quantities are raised thereabouts and Mankato is the town at which many of these are naturally marketed. The amount of this traffic there would not, however, under the most favorable rates reach proportions at all comparable with that of St. Paul and Minneapolis. The rates from these two latter towns are the same, and they are spoken of in this report collectively as St. Paul.

None of the witnesses had any very definite knowledge of the history of these potato rates. They were of the impression that the rates had been first made by the American lines to meet a rate established by the Canadian line, but they did not know why that rate was established, nor when, nor how long the present adjustment of rates had been in force.

An examination of the files of this Commission shows that the first through rate was published by the Soo Line September 22, 1889, and was 40 cents per hundred pounds to New York, Boston and Philadelphia. This rate, with some slight interruption, was continued in force by that road until April 30, 1898, when it was withdrawn. The various American lines seem to have met this rate in the latter part of September, or

the first part of October, 1889 by similar tariffs, and their rates were generally continued in effect until the Spring of 1898.

On June 13, 1898, The Western Freight Association, in behalf of all the lines leading from St. Paul east, including the Soo line, published a rate of 37 cents to New York, 40 cents to Boston, 35 cents to Philadelphia and 34 cents to Baltimore. This, it will be seen, is a base rate of 37 cents to New York with the usual differentials. That rate has ever since been and still is in force.

The Soo line in its tariffs from 1889 down to 1898 uniformly applied the through rate as a maximum at intermediate points, and all the American lines which met that rate did the same thing previous to June 13, 1898. The tariff of that date, filed by the Western Freight Association, made no mention of intermediate territory. Of the lines interested, however, the Northwestern, the Chicago, Milwaukee & St. Paul, the Wisconsin Central and the Chicago Great Western have either filed copies of the tariffs of the Western Freight Association or tariffs of their own, making the through rate from St. Paul apply as a maximum at intermediate points. The Soo Line, the Burlington and the Rock Island have not, apparently, observed that rule.

From the meager statement of facts before us in connection with an examination of these tariffs, it seems probable, and we find, that the Canadian Pacific took the initiative in 1889 in making this joint through rate on potatoes from St. Paul to the Atlantic Seaboard. We think and find, however, that this was not by reason of competitive transportation conditions at St. Paul principally, but because, in the opinion of that Company, the commodity in question could not compete in eastern markets unless given a low rate. This tariff has been maintained at substantially the same figure for 16 years. During that time it has been subject to no fluctuation of any account. It has produced no rate wars. Since 1898 all the lines have united in agreeing upon and maintaining it. Potatoes are an article of comparatively low value. They are grown in large quantities in the east and in intermediate territory between St. Paul and the eastern seaboard. If Minnesota-grown potatoes are

to compete with others upon the Atlantic Coast, a distance of about 1300 miles, they must move at a low rate. The rate from St. Paul to Chicago is the regular class rate and the rate from Chicago to the seaboard is again the class rate. If this commodity is to move this distance and to compete at the end of the haul with a similar commodity produced much nearer the point of consumption, it must almost of necessity be given a rate of transportation which is lower than the ordinary class rate established for much shorter distances. While this rate is certainly a low one yielding about 5.5 mills per ton-mile, it cannot when all the conditions are taken into account be regarded as phenomenally low. We think and find that this St. Paul rate to the seaboard is under all the circumstances a just and reasonable one.

It should be noted that while many of the low rates between St. Paul and the east in both directions are due to water competition, the witnesses for the defendant all testified that this species of transportation produced no effect whatever upon the rate in controversy.

The question now arises whether this rate should be extended to Mankato or whether it is just and reasonable to impose upon shipments of potatoes from that point the rate produced by the Chicago combination. In our opinion it is not. The same reasons which have given to St. Paul a better rate than the combination, require similar treatment for Mankato. The distance from Mankato by most lines is no greater than from St. Paul. The traffic would pass for the greater part of the distance over exactly the same road and in the same trains, whether it was originally taken up at St. Paul or Mankato. The actual cost of the carriage from one point differs but slightly with that from the other. If potatoes marketed at St. Paul cannot compete in the east without a low rate, the same thing is true of potatoes when marketed at Mankato. The defendant, along with other carriers, by putting in this rate from St. Paul and engaging in this traffic under that rate shows that it is a desirable traffic upon those terms. Considering the nature of the freight, the distance which it must be hauled, the competition which it must meet, and the fact that similar

territory has been given a low rate by the defendant, we find that it is unreasonable and unjust to impose upon Mankato the full combination of these locals. This is in line with the holding of the United States Supreme Court in *Minneapolis & St. L. R. Co.* v. *Minnesota,* 186 U. S. 257, 262, 46 L. ed. 1152, 1155, 22 L. ed. 900.

By just how much less than the combination the rate from Mankato ought to be is a difficult question. It is impossible to state upon any satisfactory basis exactly what would be in and of itself a just rate upon potatoes from Mankato to New York. All rates are made in relation to other rates and ordinarily that relation should be maintained. It was originally held that rates between St. Paul and Chicago might be less than those between Mankato and Chicago because there were competitive conditions at St. Paul which did not obtain at Mankato. The competition in that case was between lines which ended at Chicago. In this case a new and additional element is introduced since the line which first made the through rate does not touch Chicago on its way to the Seaboard.

We are satisfied that substantial justice would be done if the principle of the original Mankato case were extended to this rate. In that case a difference of 10 per cent against Mankato was approved. This would establish a rate of approximately 41 cents on potatoes by the defendant line to New York, and 39 cents to Scranton, which takes the Philadelphia rate and 38 cents to Washington, which takes the Baltimore rate. We find as a fact that at the time of the complainant's shipments in 1902 these would have been just and reasonable rates and that the rates actually charged were unjust and unreasonable by the amount of the difference. We further find that at the present time 41 cents from Mankato to New York with the usual seaboard differentials is a just and reasonable rate. We also find that at the time of these shipments the defendant had authority from its eastern connections to publish and maintain from Mankato a through rate upon the same basis of divisions as was in force from St. Paul.

Computing upon this basis, the complainant paid upon the

car shipped to Washington $25.08 and upon the car shipped to Scranton $48.61 more than he should have been required to pay.

The complainant testified that he had repeatedly made shipments from Mankato to the Atlantic Seaboard over both the Chicago Great Western and the Northwestern lines at a rate of 2 cents above the St. Paul rate. An examination of our tariffs show that the Chicago Great Western Railway had in effect, September 10, 1900, a "consolidated potato tariff" by which it named the same rate from St. Paul to seaboard destinations as that made by the tariff of the Western Freight Association previously referred to, and that by the terms of this tariff the rate from Mankato was made 2 cents higher than that from St. Paul. This Mankato rate was withdrawn April 15, 1903. Apparently the Northwestern line has never filed with the Commission any tariff naming a lower rate from Mankato than the combination of locals; but we think the complainant can hardly be mistaken in his statement that he has actually made shipments at the lower rate.

The complainant also testified that he could not handle potatoes from the vicinity of Mankato upon the Chicago combination. We so find, and this is one reason for our previous finding that this commodity should be given a rate below the combination.

At the time of the shipments in question the complainant was shipping via the Chicago Great Western and the Northwestern lines at a rate two cents higher than that from St. Paul, and he supposed when these shipments were made that the rate over the line of the defendant was the same. As soon as he ascertained the contrary he protested against the charge which was made and filed claim for the alleged overcharge.

Conclusions.

If the rate on potatoes from St. Paul to Atlantic Seaboard points was made by the Canadian Pacific line alone, independent of the defendant, it might be urged, upon the strength of the decisions of the Supreme Court of the United States, that the defendant could meet that rate without regard to competitive

territory served by it. In such case it could with truth be said that St. Paul would enjoy the lower rate in any event and that Mankato was in no respect injured by the fact that the defendant participated in the traffic. That would in substance, be the *Chattanooga Case,* 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516.

Such is not, however, by any means, the case before us. The Canadian Pacific line maintained for some nine years a rate of 40 cents to New York and Philadelphia. It published no rate to Baltimore. The rates in question are 37 cents to New York, 35 cents to Philadelphia, and 34 cents to Baltimore. Not only did the Canadian Pacific never publish these rates, but it is reasonably certain that it never would have published them but for the action of the American lines, of which the defendant is an important member. When these rates were first established by the Western Freight Association in behalf of all lines it could be said with much more propriety that the Canadian line met the rate of the defendant to New York, Philadelphia and Baltimore than that the American line met the rate of the Canadian Pacific to those points. These rates are the outgrowth of a variety of competitive conditions; of market competition, of competition between carriers, of competition upon the Atlantic Seaboard, and of competition at St. Paul. Some of these competitive forces act equally in case of both St. Paul and Mankato. Some apply mostly to St. Paul. In some the defendant is an important factor, and in some it is not concerned.

It is important, however, to notice that the result of all this competition is a normal rate. We have found that this rate from St. Paul to the East is reasonable and just and as high as could be properly applied to the movement of this traffic. It follows, therefore, that it may be used as a standard of comparison with the Mankato rate when proper allowance has been made for the greater competition at St. Paul.

We have found, independently of the St. Paul rate, that the rate on potatoes from Mankato should be less than the Chicago combination, but we have used the rate from St. Paul for the purpose of establishing the amount of the reduction. The

above holding applies to this case alone. We express no opinion as to what relation should obtain between St. Paul and Mankato if through rates were generally published, nor do we hold that a case might not arise in which the defendant could properly make its St. Paul rate without any reference to Mankato.

It has been found that the defendant might and should have established a rate from Mankato to Scranton of 39 cents and to Washington of 38 cents per hundred pounds, applicable to the shipments of the complainant, and that by its failure to do so the complainant has been damaged to the amount of $73.69. An order should issue directing the payment of this sum with interest from November 1, 1892. It has also been found that the defendant should at the present time put in effect corresponding rates from Mankato to eastern destinations, but it is difficult to see how in the present state of the law this Commission can make any order which will be effectual in the premises. It can only recommend that this be done.

No. 806.

THE FRED G. CLARK COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; LEHIGH VALLEY RAILROAD COMPANY; DELAWARE & HUDSON COMPANY; BOSTON & MAINE RAILROAD; and NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

No. 796.

WAVERLY OIL WORKS

v.

PENNSYLVANIA RAILROAD COMPANY; DELAWARE & HUDSON COMPANY; BOSTON & ALBANY RAILROAD COMPANY; and NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

Decided February 14, 1906.

The N. Y., N. H. & H. R. Co., called the New Haven Co., refuses to make and maintain joint through rates on petroleum and its products from Cleveland, O., Pittsburg, Pa., and other points in Pennsylvania and Ohio, to points reached by its line in New England, and on all such traffic insists upon exacting the local charges from junction points with other carriers to the various destinations. The New Haven Co. does participate in through rates to New England points on other traffic generally. Ordinarily the rate to Boston applies to points in Massachusetts and Connecticut, including junction points with the New Haven Co., and it results that its refusal to join in through rates on petroleum and its products operates to increase the rate by the amount of its local charge. The Standard

Oil Co. brings crude oil by pipe line to its seaboard refineries and sends the refined oil and the products by tank steamers to distributing stations at Wilson Point, Conn., and India Point, R. I., and also has distributing stations at New London, Conn., and East Boston, Mass. From the distributing stations the oil and products are shipped out locally to interior points. Independent shippers, like complainants, are obliged to send shipments by rail to the same destinations. The combination rates on petroleum and its products from Cleveland and Pittsburg to points reached by the New Haven Co. result in unreasonable and unjust rates. The refusal of the New Haven Co. to consent to and participate in through rates on that traffic is unjust and unreasonable, and the situation is such as to operate greatly to the advantage of the Standard Oil Co. There is no competitive relation between petroleum and its products on the one hand and other articles of traffic on the other, and the failure of the New Haven Co. to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. The Act to regulate commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief can not be af forded by the Commission and the complaint must be dismissed.

F. A. Quail for Fred G. Clark Company and Waverly Oil Works.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company.

E. J. Rich for Boston & Maine Railroad.

J. J. Brooks for Pennsylvania Railroad Company.

E. G. Buckland for New York, New Haven & Hartford Railroad Company.

Report and Opinion of the Commission.

PROUTY, *Commissioner:*

The complaint in both of the above cases is the same and is that the New York, New Haven & Hartford Railroad Company, known in this report as the New Haven Company, declines to make joint through rates on petroleum and the products of

petroleum, while it makes such rates on most other commodities, thereby imposing unreasonable transportation charges upon petroleum and its products and discriminating against the independent refiners of petroleum in favor of the Standard Oil Company. The Waverly Oil Works claims reparation in respect of a specific shipment from Pittsburg, Pennsylvania, to Waterbury, Connecticut, but this shipment appears to have passed over a route in connection with which the New Haven Company has no joint tariffs whatever, so that this branch of the case is not presented by the record, and will not be considered.

The Fred G. Clark Company is located at Cleveland, Ohio, and is a corporation. It deals to some extent in illuminating oil but handles principally lubricating oil and other oils of various kinds which are not illuminating. The company owns and operates a refinery of its own, but the greater part of its business is the jobbing of other manufacturers' products. The Waverly Oil Works is situated near Pittsburg in the Pennsylvania oil fields where it operates a refinery of its own. It sells the entire product of that refinery and we do not understand that it handles other oil in addition to its own product.

Rates on nearly all commodities from Cleveland and Pittsburg into New Haven territory are the Boston rates; that is, the interior destination takes the same rate which applies to Boston. In case of petroleum and the products of petroleum the New Haven Company declines to make such joint rates and insists upon receiving its local rate from the point at which the shipment is delivered to it. This applies to Boston as well as points taking Boston rates.

Traffic from the sections under consideration may reach the New Haven road at various junction points. Coming by the Pennsylvania or the Central of New Jersey it would be delivered to it at Jersey City upon the western bank of the Hudson River. From there the car is transported by floats to the Harlem River Yards of the New Haven Company. From the Delaware & Hudson, the Erie, and the Lackawanna roads, freight was formerly received by the New Haven Company upon the west bank of the Hudson River at Newburgh, and thence trans-

ported by floats across the river to its tracks upon the eastern bank. At the present time the New Haven Company, through its acquisition of the Central New England Railroad, operates a line over the Poughkeepsie Bridge, and an arrangement has been made by which all freight formerly received at Newburgh and ferried across the river is now taken over that bridge. Traffic entering New England by the Boston & Albany Railroad, now operated by the New York Central, reaches the New Haven at Pittsfield, Springfield, Worcester and other junction points, while the Fitchburg Railroad, now controlled by the Boston & Maine, connects with the New Haven at Turner's Falls, Fitchburg and several other places.

Whenever petroleum or its products are shipped from the west to New Haven territory they must pay the rate to the junction point and the local rate from the junction point. The rate to all junction points upon the Boston & Albany and the Fitchburg is the Boston rate, that to the junction point via the Poughkeepsie Bridge and at New York City is apparently the New York rate. It will be seen, therefore, that the effect of this refusal to pro-rate upon the cost of transporting petroleum and its products from the oil fields of Pennsylvania and Ohio is to increase the freight by substantially the New Haven local rate. For example the rate on petroleum from Cleveland to Boston at the present time is 23½ cents per hundred pounds. A shipment moving by the New York Central Lines, destined to Hartford, Conn., would perhaps be delivered to the New Haven Company at Springfield, and in that event would pay a rate of 23½ cents up to Springfield and the local rate from Springfield of 5 cents, making a total through charge of 28½ cents, while under the rule applicable to other commodities the total charge from Cleveland to Hartford would have been 23½ cents, the Boston rate.

The effect of the refusal of the New Haven Company to pro-rate on shipments of petroleum and its products is well illustrated by a case which was recently brought to the attention of the Commission. The Pennsylvania Railroad Company in connection with various New England roads publishes a joint tariff naming through rates from Philadelphia to points in New Eng-

land. In this tariff the New Haven road joins, with the usua- exception as to petroleum. While the Central New England Railway was an independent line it joined in these through tariffs and the products of petroleum could be shipped by that line from Philadelphia to Hartford at the regular third class rate of 19 cents in less than carload lots. While this tariff was in force a shipment of five barrels of petroleum lubricating oil weighing 2,000 pounds was made from Philadelphia to Hartford, the freight charge being $3.80. After the Central New England had passed under the control of the New Haven and after the joint rate on petroleum had been withdrawn a second shipment of five barrels weighing 2,000 pounds was made. The lowest rate now applicable to this shipment was the sum of the locals via Jersey City, being 15 cents from Philadelphia to Jersey City and 19 cents from Jersey City to Hartford, a total rate of 34 cents per hundred pounds, resulting in a total freight charge of $6.80. The absorption of the Central New England by its competitor and the cancelling of its tariff on petroleum had increased the freight on this shipment almost 100 per cent. It may be noted that five barrels of lard oil of the same weight used for lubricating purposes might still be sent from Philadelphia to Hartford for $3.80, although the value of that oil would be several times greater than that of the petroleum oil and although it is in no respect more desirable freight to handle.

The general effect of this refusal on the part of the New Haven company to join in through rates is, as already said, to increase the cost of transporting petroleum and its products from Pittsburg, Cleveland and similar points to destinations in New Haven territory by substantially the amount of the local rate. This would vary according to the ultimate destination from 5 cents to 15 cents per hundred pounds. It is probably safe to say that on the average the transportation charge is increased by this means from 8 to 9 cents per hundred pounds.

The complainants insist that the purpose and effect of the action complained of upon the part of the New Haven Company are to give the Standard Oil Company a monopoly of its territory.

It is sufficiently correct for the purposes of this report to treat the petroleum which supplies New England with gasoline and illuminating oils as originating at Pittsburg and Cleveland, and until the discovery of the Texas oil fields the same was true of lubricating and fuel oils. The complainants refine this petroleum at Cleveland and Pittsburg and ship the product east by rail. The Standard Oil Company also maintains extensive refineries in the same vicinity, but oils handled by that company in the east are for the most part pumped through pipe lines to the seaboard either before or after refining.

The products of petroleum sold by the Standard Oil Company in New Haven territory are mainly distributed from Wilson Point and India Point. Wilson Point is upon the coast a few miles from South Norwalk, Conn.; India Point is in the vicinity of Providence, R. I. Most of the shipments from these points are in tank cars but some are in barrels usually in carload lots. The testimony shows that the Standard Oil Company also has a distributing station at New London, Conn., on the tracks of the New London & Northern Railway, controlled by the Central Vermont Railway Company, and another tank station at East Boston on the tracks of the Boston & Albany Railroad. Shipments are made from both these stations to some extent in tank cars. Both carload and less than carload shipments are also made to a considerable extent from New York City in barrels.

The refineries of the Standard Company are apparently located in the vicinity of New York harbor and the refined product is transported by tank steamers to these various distributing stations. The transportation cost by this method is less than it is by rail. The representative of the Waverly Oil Works testified that in his opinion the Standard Company could transport its product from the oil field to Wilson Point or India Point for one-half cent per gallon less than he could transport his product to a junction point upon the confines of New Haven territory.

Special commodity tariffs are established by the New Haven road for the distribution of this oil from Wilson Point and India Point. These rates apply only to carload shipments, and are from four to ten cents per hundred pounds. They are most-

ly in the nature of blanket rates. From Wilson Point the prevailing rate to the majority of stations west of New Haven is 7 cents per hundred pounds while to territory east of New Haven it is 10 cents per hundred pounds. The prevailing rate from India Point to stations east of New Haven is 6 cents while to stations west it is 10 cents. The Standard Company can reach most of the stations in New Haven territory from one or the other of these points of distribution at an average rate of between 6 and 7 cents.

When oil is shipped by the Standard Company from its stations at East Boston or New London or when it is delivered to the New Haven at New York it pays the regular class rate.

Until quite recently petroleum and its products have been classified by the New Haven road in carload lots as fifth class, but about two years ago, in consequence of a vigorous protest from a dealer in oil against this policy of the New Haven Company, that classification was changed and petroleum and its products are now rated as sixth class. The local sixth class rate from the various junction points at which oil might be delivered to the New Haven road to various destinations in New Haven territory must manifestly vary greatly. Taking a central point like Springfield the local rate would run from 5 to 15 cents, but the more distant points could be reached at less expense through some other junction. It seems probable to us that the average local rate which would be paid by shipments of petroleum from western points of origin would, as a practical matter, be about 9 cents per hundred pounds. Taking Springfield once more as an illustration, we find that the rate from Wilson Point to Springfield is 7 cents per hundred pounds while from Springfield to Wilson Point it is 11 cents.

The weight of different kinds of petroleum oil varies considerably, but on the average about 13 gallons weigh one hundred pounds, so that one cent in the freight rate amounts to one-thirteenth of a cent in the cost of the oil per gallon. In the handling of these oils especially kerosene and lubricating oil in bulk one-eighth of a cent per gallon is regarded as a fair profit. Two cents per hundred pounds in the freight rate would, therefore, control a particular territory; that is, the seller who had that

advantage could make a fair profit while his competitor lost money.

The testimony of the witnesses produced by the complainants shows conclusively that petroleum oils are not to-day and have not been since the New Haven cancelled its through rates sold in this territory to any extent by any competitor of the Standard Oil Company. The witnesses for the New Haven Company admitted that this was so, but insisted that while the practical effect of this policy might be to exclude from its territory the competitors of the Standard Oil Company such was not the purpose.

The New Haven Company claims that the products of petroleum are dangerous and undesirable freight and that the method of distribution adopted by it makes both for the safety of the public and the interest of the railroad.

Of the product resulting from the refining of crude petroleum 10 per cent is gasoline and substances of that general character. These oils are all highly volatile, the gases are readily explosive and their handling is attended by real danger. This case shows that numerous accidents, resulting in serious loss not only of property but of human life, have occurred in the transportation of gasoline and kindred articles by rail.

Forty per cent of the product of petroleum is lubricating oil of various kinds. This cannot be regarded in any proper sense as a dangerous article to transport. While the different products of petroleum grade into each other in such a way that it would probably be impossible to find a lapse of 100 degrees in fire test, still as a practical matter lubricating oils and cylinder oils are in no way akin to gasoline and naphtha. They are not volatile, their fire test runs from 300 degrees to 600 degrees Fahr., being about the same as with oils produced from other substances like lard oil, cotton seed oil, linseed oil, etc. They do not occasion spontaneous combustion. They are no more liable to ignition than most ready-mixed paints, washing compounds and many other things which might be named and whose transportation is not regarded as hazardous.

Some 17 per cent of the product of petroleum is styled "export oil," which appears to be a low grade of kerosene oil which

cannot be used under the laws of the United States, but which can be exported to foreign countries. About 28 per cent is commercial kerosene as used in this country, the remaining 5 per cent being lost in the refining. Kerosene oil is more inflammable than lubricating oils but nothing like as much so as gasoline. It does not form in the open air a vapor which is explosive. It does not ordinarily ignite at less than 150 degrees Fahr. In case a tank car of kerosene were broken open the oil by spreading over surrounding objects would create for the time being a highly combustible condition, but the testimony, although addressed to the accidents which have occurred from the transportation of petroleum and its products, did not show any from the transportation of kerosene, and it is our impression that such accidents would seldom occur. The New Haven Company receives, both on its floats in New York Harbor and from its connections, tank cars of turpentine of which the fire test is much lower than kerosene oil and which is in every way a more hazardous commodity to transport. It received down to 1904 large quantities of kerosene at pier 50 in New York City which it loaded into cars at that point and transported by floats to its Harlem River yard for distribution over its system. It still receives at that point lubricating oils, but not the more volatile products of petroleum. It transports upon its floats from Jersey City at the present time lubricating oil in barrels for all points and lubricating oil in tank cars when intended for Long Island.

Assuming that the transportation of the products of petroleum is accompanied by special risk, in just what way does the refusal of the New Haven Company to grant through rates to that commodity help the matter? The defendant answers that under its present system this commodity moves in solid trains and on particular days and that for this reason its movement can be more carefully supervised. The testimony shows that oil is received for shipment at Boston only on specified days and it tends to show the same fact as to New York. These regulations, however, apply to oil of all kinds, including those on which the New Haven Company voluntarily makes joint rates, and the reason for the rule is found not in the dangerous character of the shipment but in the fact that the oil is liable to contaminate other

commodities which are brought into contact with it. With respect to carload shipments from East Boston and New London it appears that these are received on any day of the week from the railroads upon whose lines the storage tanks are located in exactly the same way as carloads of petroleum would be received and forwarded from any connecting railroad at any junction point.

No testimony whatever was introduced as to the method of distributing from India Point. In the earlier stages of the case some claim was made that the distribution from Wilson Point was by solid train loads; that a train load would be taken for a particular division and run through to the end of that division, dropping off cars here and there on the way. Upon the final hearing, however, the complainants produced as a witness, the station agent at Wilson Point, having charge of these shipments, and from his testimony it appears that a solid train of from 15 to 25 cars is sent out from that station each day which runs solid as far as New Haven, but that no attention is paid to the destination beyond New Haven; that is, the solid train is broken up at New Haven and sent out in all directions as may happen.

It also appeared that no special tests were made or inspection undertaken by the railroad of tank cars at Wilson Point aside from those regularly made at junction points.

Petroleum is ordinarily classified as fifth class. By the New Haven road it is rated as sixth class. It is sought after by carriers generally as a desirable species of traffic, and the testimony discloses no difficulty whatever in exchanging such traffic between different lines, nor did it appear that, with the exception of the New Haven road, any line which exchanged other traffic declined to exchange this also.

We are unable to see how the refusal of the New Haven Company to accept shipments of petroleum at its various junction points adds materially to the safety of the communities served by it in the handling of this business. The number of cars is the same, the distance hauled is substantially the same; with the exception of the solid train from Wilson Point to New Haven, a distance of 32 miles, the conditions under which the traffic is hauled are practically the same. We fail to find that

this method of handling the petroleum traffic substantially diminishes the danger: it undoubtedly does somewhat contribute to the convenience with which the New Haven Company can transact that business. It is always more desirable from an operating standpoint to receive from a single point and a single shipper than it is to take up the same amount of traffic at various points in smaller shipments.

Assuming that the New Haven Company can handle this oil traffic somewhat more advantageously under the present system than it could if the oil were received by rail at its various junction points, it is still necessary to know how the revenue under the present system compares with what it would be under the pro-rate system, to determine which method on the whole is for the interest of that company. In this view the New Haven was asked to state what divisions of the through rate that company had received when the joint tariffs were in effect and what divisions it would receive if it were to re-establish such tariffs upon the same basis with other commodities. The witness asked to be excused from giving this information for the reason that its divisions were matters of private arrangement which it did not care to disclose. Inasmuch as the matter was indirectly brought in issue the inquiry was not insisted upon, but the following general statement was made.

The present vice-president in charge of traffic came to the New Haven Company in 1901. He testified that soon after assuming office he became convinced that these distributing oil rates from Wilson Point and India Point were too low and that he advanced them about 25 per cent. This witness stated that the revenue derived at the present time under the present system was just about equal to that which would accrue if joint rates were in effect, but that the revenue previous to the advance above mentioned was distinctly less.

The defendant insists that whatever may have been the actual effect of the cancellation of its joint tariffs it had no intent to thereby prefer the Standard Oil Company; that it is ready now and always has been ready to accord to any other dealer in the products of petroleum rates as favorable as those given the Standard Oil Company.

No witness produced by the defendant had any knowledge of the time when, nor the reasons why, these through rates were cancelled. The first distributing tariff among our files is one naming a rate of 6 cents per hundred pounds from Wilson Point to Springfield, Mass., and intermediate stations, which was made effective July 7, 1896. The first notice found in any tariff that joint rates on petroleum had been withdrawn by the New Haven Company is in that of the Boston & Albany which was made effective July 22, 1896. It is perfectly apparent that if no through rate was allowed via Springfield, the blanket rate thus put in effect would give to the Standard Company a monopoly of all stations to which that rate applied except Springfield itself, and the officials of the New Haven road must have known and intended this result when they at the same time established the distributing rate and took out the through rate. At the time these through rates were withdrawn the Standard Oil Company, as we understand this testimony, was the only company which piped petroleum to the seaboard and was, therefore, the only company which could adopt this method of distributing oil into New Haven territory. As a practical matter for the last ten years that company alone has been in position to take advantage of this method of distribution and is the only company which has done so until very recently.

The discovery of the Texas oil fields placed another supply of petroleum upon the seaboard and made it possible to transport Texas oil by boat to New England at a low cost of carriage. One company, The Sun, dealing in these oils has already established a distributing station at Bridgeport, Conn., and is now bringing oil to some extent to that point for distribution in New England. A representative of that company testified that the New Haven road had tendered it the same scale of rates as obtained from Wilson Point and India Point. It also appeared that another pipe line was now in operation between the Pittsburg fields and the seaboard. So far as this case discloses, no application for similar rates has ever been made to the New Haven Company and denied. We have no doubt that at the present time the management of that company would extend to any applicant rates similar to those accorded the Standard Oil Com-

pany. The complainants and all other independent refiners whose operations are moderate in amount can never be in position to avail themselves of that system.

Some witness for the New Haven Company estimated that the number of carloads distributed by the Standard Oil Company over its system would reach 8,000 per year. It is evident that this estimate is too small. The testimony of the station agent at Wilson Point shows that the distribution from that station must equal 6,000 carloads annually, and an examination of the territory supplied from India Point convinces us that the quantity sent out by the Standard Company from its distributing tank there and from its stations at East Boston and at New London must bring the total up to between 10,000 and 12,000 cars.

The carriers operating from Cleveland and Pittsburg are willing and anxious to join with the New Haven Company in establishing through rates upon petroleum in the same manner that such rates are established upon other commodities and in the same manner as they were maintained previous to 1896.

It was claimed by the New Haven road that it must treat all its connections alike and that since it would not transport the products of petroleum upon its floats through the harbor of New York City and could not, therefore, receive this traffic from the roads delivering it at Jersey City, it was obliged to cancel its arrangements altogether. The testimony did not show that this was the reason why the through tariffs were cancelled, and it does indicate that the reason was an entirely different one. In point of fact the New Haven Company could without the slightest danger transport the products of petroleum upon its floats with the exception of the more highly volatile, and it is incredible that the refusal to receive these could lead to any serious friction with its connections.

We find the following conclusions of fact:

1. The refusal of the New Haven Company to establish joint rates for the transportation of the products of petroleum from Cleveland, Pittsburg and corresponding territory is unjust and unreasonable.

2. The result of this refusal is to impose upon the transpor-

tation of the products of petroleum from these points to destinations in New Haven territory rates that are excessive, unjust and unreasonable.

3. As a practical matter this course upon the part of the New Haven Company has in the past resulted in giving to the Standard Oil Company an actual monopoly of the sale of the products of petroleum in New Haven territory. While we cannot find that the present system was adopted at the solicitation of the Standard Oil Company for the purpose of granting it a preference, we do find that the officials of the New Haven Company knew when the through tariffs were cancelled and the first distributing tariffs put into effect in 1896 that what was done would have this result; and they have known ever since and do now know that such has been and is the effect. They have been repeatedly applied to by shippers for through rates but have refused to grant the same.

We have no means of determining whether the New Haven Company would have granted to other shippers the same rates which the Standard Company has enjoyed in the past; we find that to-day it would. The monopoly which the Standard Company has enjoyed in the past will not probably be as complete in the future for the reasons already stated.

The complainants often desire to make quotations on oil by telegraph and in order to do this it is necessary for them to know the exact rate to destination. Their evidence tended to show that much delay had been experienced in obtaining a quotation of rates into New Haven territory and it was claimed that the New Haven Company had purposely obstructed the giving of such information for the purpose of discouraging shipments.

In order to determine the rate to a point upon the New Haven line it is necessary to select the proper junction point and to ascertain the rate from there to destination. Carriers in the west decline to be bound by previous quotations since the local rate upon the New Haven may have been changed and insist upon obtaining that rate in each instance when the quotation is asked. This necessitates a delay of two or three days and sometimes longer, but we think this is due to the method by which

the rates must be ascertained and not to any intentional obstruction upon the part of the New Haven Company.

CONCLUSIONS.

During the taking of the testimony a representative of the Waverly Oil Works stated that, in his opinion, the cost of transportation to the Standard Oil Company, through its pipe line and tank steamers, to its distributing stations at Wilson Point and India Point was one-half cent per gallon less than the cost to his concern of transporting his product to a junction point with the New Haven road at the present rate of 23½ cents. Being thereupon asked how, if petroleum products were sold on a margin of one-eighth of a cent per gallon and if the Standard Company could transport its product to the confines of New Haven territory for one-half cent per gallon less than the independent refiner, he could expect to compete in that territory with the Standard Company, his answer was: That by giving personal attention to his business he could refine petroleum cheaper than the trust; that he believed the difference in cost of manufacture was sufficient to enable him to compete if he were given a just freight rate, and that in any event he was entitled to a fair chance. This expresses our own opinion of the situation. If the Standard Oil Company by reason of its superior facilities of any sort can lay oil down in New Haven territory for less than its competitors it should have the benefit of those advantages, but it should not be given any artificial advantage by the manipulation of railroad tariffs. The sole duty of this Commission is to inquire whether the rates complained of are lawful.

It is important to notice exactly the effect of this refusal upon the part of the New Haven Company to pro-rate. As stated in the findings of fact, it simply operates to increase the cost of transporting the products of petroleum from Cleveland and Pittsburg points into New Haven territory by from 8 to 9 cents per hundred pounds. It should be further noticed that while the cost to the complainants is thus increased the New Haven Company is not materially benefited. The revenues of that company are almost exactly the same under the present system that

they would be if this traffic moved by rail through the various junction points. The difference between the present rate and the through rate in that event would be borne by the railroads which carry the freight from the point of origin up to the junction point, and which are willing to accept this division in order to obtain the business.

Assuming that the Standard Oil Company, by reason of its superior facilities in the transportation of crude petroleum or the refined product, will in any event supply this territory it must still be evident that the price which this company can and will exact depends upon the price which its competitors can make. Since their only method of transportation is by rail it is further evident that the price which they can quote depends directly upon the rate. The attitude of the New Haven Company increases that rate between 8 and 9 cents per hundred pounds and, therefore, adds to the price which the independent refiner can name by that amount. In other words the Standard Oil Company can charge for its product in this territory 8 cents a hundred pounds more than it could if the New Haven Company accorded the same terms to this traffic which it gives to nearly all other kinds of traffic. We have seen that the Standard Oil Company sells in this territory from 10,000 to 12,000 carloads per year. The minimum weight, according to the tariffs, is 40,000 pounds but the actual weight is considerably more. It is safe to say that this company is able to obtain from the sale of that oil in this section from $300,000 to $400,000 a year more than it could if through rates were applied to this traffic.

It is said that the New Haven Company can handle this business at less expense under its present system of distribution than it could if the oil were received at various junction points from its rail connections and the opinion has been expressed in the findings of fact that to some extent this is true. But in determining the reasonableness of a rate the interest of the railway cannot be alone consulted; we must consider as well the interest of the general public. Every railroad company would find it somewhat to its advantage to receive any species of traffic in large quantities from a single shipper rather than in small lots from

many. To apply the doctrine for which the defendant contends in this case to the tariffs of this country would shut out the small operator of every sort and deliver the business of this land into the hands of the great combinations. We are agreed that these complainants both in justice to themselves and in the interest of the public are entitled to reasonable rates upon this commodity, that the present rates are unreasonable and that we ought, if we have the authority, to make some order which will correct the wrong.

While the complainants experience some difficulty in ascertaining the through rate to points in New Haven territory and while that is an impediment to the conduct of their business, the real difficulty under which they labor arises from the fact that the rate is too high. This difficulty would be remedied if the defendants could be compelled in any way to publish and maintain rates which were reasonable, and one method of accomplishing this would be to require the carrier which brings the traffic from the point of origin to the junction point to maintain a proportional rate for that service equivalent to the division which it would receive from a joint through rate, and compelling the New Haven Company to put in effect rates from the junction point which were equivalent to the blanket rates which are now applied by it from Wilson Point and India Point. This would be perhaps on the whole the most just disposition of the matter, but this Commission has no authority whatever to make an order of that character, for it can neither prescribe a rate for the future, nor determine the division of a through rate.

The complainants recognize this and do not invoke the exercise of any such power; they do urge that we have authority to compel this New Haven Company to accord to petroleum and its products the same system of joint rates which it applies to other commodities. We see no reason why the New Haven company should not accord to its territory the Boston rate in case of petroleum exactly as it does in case of other commodities and once more if we have the authority to compel it to do so we ought, in our opinion, to exercise that power.

The complainants insist that the Commission may in this instance issue an order against the New Haven Company to cease

and desist from its refusal to make through rates and rely upon *Interstate Commerce Com. v. Cincinnati, New Orleans & Texas Pacific Railway,* 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700, known as the Social Circle case. The facts were these. The complainants were manufacturers and shippers of carriages from Cincinnati, Ohio, to Atlanta, Social Circle and Augusta, Georgia. This traffic passed from Cincinnati to Chattanooga over one line of railroad, from Chattanooga to Atlanta over another and from Atlanta to Augusta over a third, the Georgia Railroad. Social Circle was a few miles east of Atlanta and between Atlanta and Augusta so that this traffic in reaching Augusta by this line went through Social Circle, and the complaint was that the rate charged to Social Circle was higher than the rate to Augusta in violation of section four.

It appeared that these three lines of railway had established a through rate and joined in the publication of a through tariff from Cincinnati to Augusta for the carriage of this traffic and that this through rate was divided between them in arbitrary proportions, the share of each being less than its charge for the corresponding local service. In case of traffic destined to Social Circle the Georgia Railway did not file joint rates and declined to recognize through bills of lading. Its rate charged was the local rate from Atlanta to Social Circle and it insisted that this business, being entirely within the state of Georgia, was not subject to the Act to regulate commerce, and that the Commission, therefore, had no jurisdiction of the rate and no authority to issue any order with respect to it. This contention was rejected by the Supreme Court which held that if the Georgia Railroad participated in through traffic to Augusta it thereby subjected itself to the jurisdiction of the Commission and could not deny that jurisdiction with respect to other traffic of that character which it carried to Social Circle.

In the case before us there is no question of jurisdiction. The New Haven Company engages extensively in interstate transportation and these very local rates from the junction point to destination are generally interstate.

The court further held in the Social Circle case that the

order of the Commission requiring the defendants to cease and desist from charging a higher rate to Social Circle than was charged to Augusta was lawful and should be enforced. It will be noticed, however, that the complaint arose under the fourth section and was that a higher charge was imposed at the intermediate than at the more distant point. The Commission decided that this charge ought not to be higher and the court sustained that finding of fact. An order to cease and desist was, therefore, the only order which could be made in the premises and was a complete remedy for the unlawful act in issue. It did not require the carrier to do a thing which in the opinion of the Commission should be done, but rather to obey the express terms of the statute. The carrier could comply with the order either by reducing its rate to Social Circle or by raising its rate to Augusta.

The complainants urge that the action of the New Haven Company is in violation of the third section of the Act to regulate commerce which provides in substance that no undue preference or undue discrimination shall be practiced between persons, localities or commodities. They urge that these defendants by refusing to accord to the products of petroleum the same privilege of through routes and through rates which it accords to most other kinds of traffic violates this provision, and should be directed to cease and desist from such violation.

We cannot agree with the complainants in this respect. While there may be a preference in favor of other commodities against petroleum it is not that preference which injures these complainants. The Commission has recently, in passing on a similar case, reached this conclusion. *Railroad Commission of Kentucky v. Louisville & Nashville Railroad Company,* 10 I. C. C. Rep. 173. The Louisville & Nashville Railroad had entered into a contract with the Bourbon Stock Yards of Louisville to make those stock yards its exclusive live-stock depot. Subsequently the Central Stock Yards were erected in the city of Louisville upon the line of the Southern Railway, which connected with the Louisville & Nashville in the city of Louisville. The Louisville & Nashville declined to deliver upon the request of its shippers carloads of livestock to the Southern Railway

for transportation to the Central Stock Yards, and the Railroad Commission of Kentucky began proceedings before this Commission for the purpose of compelling such deliveries in case of interstate shipments.

It appeared that by virtue of mutual agreement between all the railroads entering the city of Louisville certain switching limits had been defined within which carloads of dead freight were delivered by the various roads. The Central Stock Yards were located within these switching limits, and the Louisville & Nashville regularly made delivery of carloads of dead freight to the Southern Railway destined to the Central Stock Yards. One claim of the complainant was that that company by making deliveries of dead freight and refusing to make corresponding deliveries of live stock unduly discriminated against live stock in violation of the third section. We held otherwise upon the authority of *Butchers' & Drovers Stock-Yards Company v. Louisville & Nashville Railroad Company*, 14 C. C. A. 290, 31 U. S. App. 252, 67 Fed. 35, and in that connection said:

"To refuse to make deliveries of live stock is a hardship upon that species of traffic; to make deliveries of dead freight is a benefit to that species of traffic; but the refusal to switch live stock does not in the case before us in any respect benefit dead freight. If we were to find an undue discrimination and were to order defendants to cease from its continuance, that order might be complied with either by delivering live stock or by ceasing to deliver dead freight. In case the latter alternative were adopted, the interests for which the complainant stands would be in no respect benefited, while those persons who now do benefit from the present deliveries might be greatly damaged. It does not appear, and there are no means of determining, which alternative the defendant would adopt if put to the choice, and we should hesitate, under those circumstances, to make an order which might result, not in advantage to live stock shippers, but in detriment to all shippers of dead freight."

So in the case before us the fact that the New Haven Company pro-rates upon other kinds of traffic while it denies that privilege to the products of petroleum does not injure the complainants. If the New Haven Company were to cancel its

through tariffs on other commodities that would in no respect benefit the complainants. What hurts them is the imposition of a rate that is too high.

It is said that this course of action upon the part of the New Haven works an actual discrimination against these complainants in favor of the Standard Oil Company, and that we should order the New Haven Company to desist from that discrimination. We have seen that there is no discrimination in terms in favor of the Standard Oil Company. The complainants have never been refused the same distributing rates which that company enjoys. If that company makes shipment from Cleveland or Pittsburg by rail it must pay exactly the rates which are imposed upon these complainants. While the action of the defendant gives to the Standard Oil Company an advantage of very great value, that advantage grows out of the fact either that its distributing rates are too low or that the rate which these complainants are compelled to pay is too high. No finding has been made as to the distributing rates, but it has been found that the rates charged the complainants are unreasonable. An order to cease and desist from discrimination in favor of the Standard Oil Company could only mean, upon the findings of fact in this case, that the defendants should accord to the complainants through rates.

We have found that reasonable rates would be in this case accorded to the complainants if the New Haven Company were to apply to this commodity the same through tariffs which it generally uses; that is, give it the Boston rate. The final question is, therefore, in every view of the case, can we order the New Haven Company to cease and desist from its refusal to apply joint rates to this commodity?

If this Commission determines that a given rate is too high it may, according to its previous decisions and apparently according to the decisions of the courts, lawfully order a carrier to cease and desist from maintaining that rate. If such an order is sustained the carrier must put in effect some other rate and presumably some lower rate. Suppose now the Commission were to find the rate in controversy 5 cents higher than it ought to be and order the carriers to cease and desist from charging any

rate in excess of a rate 5 cents below the one in effect. This would be exactly equivalent to an order in terms that the carrier should not for the future exceed a rate 5 cents below that in effect, and the courts have held that this order is beyond the authority of the Commission. If now we make an order requiring the New Haven Company to cease and desist from its refusal to maintain joint rates on petroleum and its products, that order can only be complied with by the making of a joint rate upon this commodity. It is exactly equivalent to an affirmative requirement that these defendants make joint rates. Has this Commission authority to make that order? We think not.

Every joint rate is a matter of agreement between the parties to it. This agreement must determine what rate shall be charged, what division of this rate each carrier shall receive, upon what conditions the exchange of this traffic and the adjustment of these divisions shall be conducted. No just order can be made and enforced unless the authority making that order has the right in case the railways do not themselves agree, to determine these various questions.

It is said with great force that in this case the New Haven Company already has in effect joint tariffs with its connections applicable to most commodities and that there must be in effect some basis of division, some agreement as to the method of exchanging the traffic. It is said that until 1896 the New Haven Company did actually apply through rates to this traffic and that there is nothing to indicate that the arrangements then in effect were not satisfactory, provided the joint rate was to be continued. Why may not the Commission direct that company to apply the same arrangement to petroleum and its products which formerly existed, and which now exists as to other commodities?

It might, perhaps, be said that the conditions surrounding the transportation of petroleum and other traffic are not the same, and that the ideas of the New Haven Company may have changed in the last ten years. We have found, for example, that 10 per cent of the products of petroleum are of a character which renders its transportation highly hazardous. Since 1896 various things have occurred to emphasize the danger of this busi-

ness. The New Haven Company might, perhaps, insist that some higher rate be applied to or some special safeguards thrown around this volatile and explosive substance to which its connections would not agree.

The question is not, however, whether the authority could be conveniently exercised in this or any other case, but whether it exists. Neither the power itself nor the means to justly exercise that power are expressly provided for in the present statute, and such a power cannot be implied any more than could be the authority to fix a future rate. It has been repeatedly determined by judicial decision that the Act to regulate commerce does not require carriers to make joint rates and that the Commission has no power to compel such rates. *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.* 2 L. R. A. 289, 2 Inters. Com. Rep. 351, 37 Fed. 567; *Oregon Short Line & U. N. R. Co. v. Northern P. R. Co.* 4 Inters. Com. Rep. 249, 51 Fed. 465; *Little Rock & M. R. Co. v. St. Louis & S. W. R. Co.* 26 L. R. A. 192, 4 Inters. Com. Rep. 854, 11 C. C. A. 417, 27 U. S. App. 380, 63 Fed. 775; *Central Stock Yards Co. v. Louisville & Nashville Railroad Co.* 63 L. R. A. 213, 55 C. C. A. 63, 118 Fed. 113; *Central Stock Yards Co. v. Louisville & Nashville Railroad Co.* 192 U. S. 568, 48 L. ed. 565, 24 Sup. Ct. Rep. 339.

While Congress might invest the Commission with authority to correct this wrong it has not done so and the complaint must be dismissed.

No. 857.

NATIONAL MACHINERY AND WRECKING COMPANY
v.
PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; CLEVELAND, AKRON & COLUMBUS RAILWAY COMPANY; PENNSYLVANIA COMPANY; PENNSYLVANIA RAILROAD COMPANY; ERIE RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; and LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

Submitted March 17, 1906. Decided March 23, 1906.

1. Whether the rate on a second-hand dynamo shipped from the electric light station to the repair shop should be lower than is charged upon either a new or second-hand dynamo sent to the station for use, is a question of policy for the railways, and this Commission cannot say that it is unjust or unreasonable to exact the same charge for the new and the second-hand dynamo.
2. Old dynamos which have become merely combinations of copper, brass and iron scrap and valuable only as junk should, under suitable regulations fixed by the carrier, be given the rating for junk, basing the same on the highest class metal used in the construction.

A. G. Carpenter for complainant.

Andrew Squire and *C. T. Brooks* for Pennsylvania Railroad Company, Pennsylvania Company, and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

Cushing & Clark for Erie Railroad Company.

F. J. Jerome for Lake Shore & Michigan Southern Railway Company.

E. A. Foote for Baltimore & Ohio Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

On October 5, 1905, the Marietta Electric Company delivered to the Nashville, Chattanooga & St. Louis Railway Company at Marietta, Georgia, a box for shipment to the National Machinery and Wrecking Company, of Cleveland, Ohio. This package was described as one box of scrap iron, weight 3,500 pounds. The same reached Cleveland via the lines of the Pennsylvania Company. That company raised the weight from 3,500 to 6,300 pounds and insisted that the shipment was not scrap iron but an electric dynamo. The rate upon electric dynamos from Marietta to Cleveland was $1.33 while that upon scrap iron was 65 cents per 100 pounds. The consignee, the complainant in this proceeding, paid the freight, $83.79, under protest and files this complaint to recover the difference between this sum and what ought reasonably to have been paid and for the further purpose of obtaining an order that dynamos of this character be properly classified by the defendants in the future. There was no dispute upon the hearing but that the weight was correctly stated at 6,300 pounds, the only question being what rate should properly be applied.

The shipment in question was in fact a dynamo which the complainant had purchased of the Marietta Electric Light Co. It had burnt out and was in fact worthless for use as a dynamo, and it was the intention of the complainant upon receiving it at Cleveland to separate the brass and copper from the iron and sell the same for junk. The iron which it contained would be worth some 1¼ cents, the brass and copper about 14½ cents a pound. The dynamo in fact produced about 1100 pounds of brass and copper junk, the balance being iron.

This dynamo was boxed or crated by the direction of the complainant, and delivered to the initial railway as scrap iron at an estimated weight already stated. The complainant knew that the valuable part of this machine to it was the brass and copper and knew about the amount of these articles which it contained. It did not know the exact weight, not having handled

such dynamos, but probably did in fact understand that it weighed in excess of 3,500 pounds.

It appears from the testimony that second-hand dynamos are extensively dealt in at the present time. A dynamo is sometimes discarded because it has worn out; oftener because it has become too small or because some change in the development of an electric light station has rendered that particular machine practically worthless. Such a dynamo is often in good condition and of considerable value for actual use in some place where machines of that size and character are needed. These second-hand machines are generally bought by some company whose business it is to transport them to the factory, overhaul the machines, making such repairs as may be needed to put them in good order, and then find customers who can use dynamos of that kind and size. The price paid for the second-hand machine is usually very much less than the cost of a new machine and very much less than the price for which it is afterwards sold.

There seems to be also another class of dealers who buy these old dynamos not for the purpose of selling them second-hand, but to convert them into junk, and to this latter class belongs the complainant. While it occasionally sells a dynamo to some other company to be refitted and resold as a second-hand machine it does no work of that character itself and nine-tenths of its business is in the purchase of various kinds of machinery for the purpose of putting it into scrap and selling the scrap as such. The owners of second-hand dynamos do not generally understand the value of the copper which those dynamos contain, which is worth nearly as much second-hand as it would be new. If they understood that the machine was being bought for scrap they would be likely to inquire into its value for this purpose and might not take the price which concerns like the complainant would in most cases offer. The complainant stated that this was an objection to shipping such dynamos as junk.

As this machine was shipped there was nothing in its external appearance from which it could be seen that it was in fact worth-

less for use as a dynamo, and it was boxed as is required for the shipment of dynamos.

CONCLUSIONS.

Two questions seem to be presented by this record. First, should the rate on second-hand dynamos be less than that on new dynamos? Second, should the rate on dynamos when they are only valuable as junk be the same as on new dynamos?

We know of no instance where the rate on second-hand articles as such is less than the rate on the new article. There are cases where a lower rate is imposed when a machine is returned for repairs than would be imposed upon a single movement of the machine. The Western Classification provides that when goods which have been shipped to a given destination are for any reason returned, a rate one-half the going rate shall be applied. Under the Official Classification shipments of household furniture when released to the value of $5.00 per 100 pounds take a first class rate as against a rate of 1½ times first class when not so released. These instances, and others which might be cited, recognize to an extent the principle that the condition and value of the property may properly be taken into account in determining the classification.

It may also be noted that in the business of handling these second-hand dynamos the dynamo when shipped from the electric light station to the factory is in the nature of a raw material which is to be converted into a manufactured product. Its value is very much less than that of a new dynamo and that value depends largely upon the freight rate. In the case before us the complainant paid $85 for this machine and were charged $83.79 for its transportation to Cleveland. Much might be said in favor of a rule which would apply a lower rate to second-hand dynamos when shipped from the electric-light station to the repair shop than is charged upon either a new oı second-hand dynamo when sent to the station for use; but that is a question of policy for the railways themselves. This Commission cannot say that it is unjust or unreasonable to require the

same charge for the transportation of the new and the second-hand dynamo.

The second question is an entirely different one. The dynamo is no longer valuable as such; it has ceased to be an electric machine and has become a combination of copper, brass and iron scrap. Should the same rating be applied to this as to the dynamo?

Under the Official Classification many iron articles in less than carload lots are rated as third class. Most kinds of machinery are second class. Dynamos are first class. Assuming, without expressing any opinion upon that subject, that this rating of dynamos is just and reasonable, it must be upon the ground that the dynamo is a valuable and delicate piece of mechanism which can afford to pay a high rate of carriage and which requires great care in handling. Neither of these things can be affirmed of that dynamo when it has become junk. Its value is no greater than the selling price by the pound of the metal which it contains, nor indeed as great, since a certain amount of labor must be expended before even that price can be obtained. It is apparent that there ought to be some way in which this scrap can be shipped at a less rate than would be applied to the dynamo.

The railway witnesses state that this can be done; that the tariffs provide a fourth class rate upon iron scrap and a third class rate upon copper and brass scrap; but they further state that in order to obtain this rate the scrap must be presented for shipment in boxes or barrels. In other words, this dynamo must have been broken up at Marietta before it was offered for shipment. The application of such a rule would have prevented the complainant from handling this dynamo or from doing a similar business at other points, and we see no good reason for its enforcement. It was said by the same railway witnesses that a steam engine, or the fly-wheel of an engine, or a steam boiler might be shipped at the scrap rate without being broken in pieces, provided it was manifestly of no further use for its original purpose. In the same way, we think that it should be possible to ship as junk a dynamo which has been bought for that purpose and which has actually no other value. Such a

dynamo need not be boxed nor otherwise prepared for shipment and it should, of course, bear the rate applicable to the highest class metal used in its construction.

The defendants insist that the application of such a rule would open the door to fraud and that dynamos which were in fact intended to be repaired and resold as second-hand dynamos would be shipped as scrap. While this objection has some force we do not regard it as controlling. First, while it is true that railways are forced to continually guard against misdescriptions of property, we still think that something should be left, in dealings between the carrier and the public, to the good faith of both parties. Second, a dynamo is a delicate piece of mechanism which requires ordinarily careful preparation for its safe transportation by rail. Few shippers would venture to offer a dynamo of much value without such preparation, since the railway would be absolved from all care in its carriage. Third, the railway has it in its power to make sure of the good faith of the shipper by requiring the dynamo to be mutilated before leaving the hands of the delivering carrier at destination. It appeared from the testimony that this requirement had on several occasions been imposed upon complainant as a condition of obtaining the scrap rate upon its shipments. Perhaps this might be done before delivery for shipment.

The shipment in question was boxed as a dynamo and was, so far as could be seen by external inspection, in fact a dynamo. It was described by the Marietta Electric Light Co. as "scrap iron," but that company understood that the machine was in fact bought by the complainant as a second-hand dynamo and that this description was intended to secure a lower rate of freight. Under the circumstances, we think that the defendants were justified in applying to it the dynamo rate, and this complaint will be dismissed; but we also feel that the rules of the carriers should be so modified that the complainant could, had it elected, have shipped this dynamo for what it in fact was, viz., junk. We do not attempt to make any order, for we have no authority to do so, but call this to the attention of the defendants in the hope that they may give it consideration.

No. 867.

IN THE MATTER OF ALLEGED UNLAWFUL DISCRIMINATION AGAINST THE ENTERPRISE TRANSPORTATION COMPANY BY RAILROAD LINES LEADING FROM NEW YORK CITY.

Railroad lines leading west from New York City make joint through rates with the New England Navigation Company, controlling the Fall River line of steamers, which plies between New York and Fall River, Mass., and some other New England cities, and also controlling other important steamer lines operating on Long Island Sound. Such joint rates apply in both directions between Western and New England points. The New England Navigation Company is owned and operated by the New York, New Haven & Hartford R. R. Co. The rail lines centering in New York and running westerly thereof refuse, for stated business reasons, to make the like or any joint rating arrangement with the Enterprise Transportation Company, a steamship line plying between Fall River and other New England points and New York City, and in competition with the New England Navigation Company's Fall River line. This Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public, and that existence may depend upon its right to engage in through business. This investigation was made with the understanding that the Commission is without power to grant any relief, and no opinion as to whether the through routing arrangement should be extended to the Enterprise Company is expressed; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail and water carriers, or at least to prevent unjust discrimination by rail carriers between connecting water lines.

Submitted March 5, 1906. Decided April 5, 1906.

David Whitcomb for Enterprise Transportation Co.

E. G. Buckland for New England Navigation Co.

G. S. Patterson for Pennsylvania R. R. Co.

George F. Brownell for Erie R. R. Co.

R. D. Whiting for Delaware, Lackawanna & Western R. R. Co.

Charles C. Paulding for New York Central & Hudson River R. R. Co.

Frank H. Platt for Lehigh Valley R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

The Enterprise Steamship Company, which plies between Fall River, Mass., and New York City, recently filed an informal complaint with the Commission alleging that it desired to engage in the transportation of merchandise from Fall River to various western destinations; that in the course of such transportation it would carry the freight to New York and send it west from New York by rail; but that the rail lines leading from New York declined to extend to it the same rates which they applied to traffic of the same character from the same point when delivered to them by its rival, the New England Navigation Company. It appeared from an inspection of our tariffs that these various rail lines published in connection with the New England Navigation Company through rates from Fall River to western destinations, and it seemed, therefore, that the complaint of the Enterprise Company was really that such rail lines declined to enter into through arrangements with it while doing so with its competitor. We accordingly advised the Enterprise Company that the Act to regulate commerce did not require rail carriers to form through routes with water lines and that, therefore, the Commission could make no order in the premises even if the complaint were sustained; but inasmuch as the subject is one of great practical importance, and since the amendment of the Act to regulate commerce was now under discussion, it seemed suitable to investigate the circumstances surrounding this complaint with a view to making some report for

the general information of the public. A proceeding of inquiry was, therefore, instituted and the various parties were heard. From the testimony taken upon that hearing, in connection with various matters of common knowledge, and the rates on file with this Commission, the following facts appear.

The New York, New Haven & Hartford Railroad Company has a practical monopoly of transportation by rail in that territory lying south of the Boston & Albany Railroad and east of its own line from South Norwalk to Pittsfield. The New Haven Company has lines which extend outside this territory, but within this territory it controls all the steam railroads of any consequence, excepting the New London Northern, which extends north from New London, Connecticut, to Brattleboro, Vermont.

Many of the most important towns served by the New Haven Railroad are located upon the ocean, so that water transportation is readily available to many points. The most important of these cities are Providence and Fall River, but lines of steamers touch at almost all cities of any importance upon Long Island Sound by which communication is had with New York City. It was necessary, therefore, for the New Haven Company, in perfecting its transportation monopoly of the territory covered by it, to control also the facilities of transportation by water, especially between those towns and New York City, and in the execution of its plans it either established or acquired most of the important steamship lines operating upon Long Island Sound. These different lines seem to have been consolidated into the New England Navigation Company which is owned and operated by the New Haven Company and which has in recent years handled most, although by no means all, of the water transportation between these various points and New York City.

The Enterprise Steamship Company is incorporated under the laws of Massachusetts and began business in June, 1905. It has a capital stock of $400,000 which, it was stated, has been paid in. Its fleet consists of three steamers, one of 800 tons burden and two of 1800 tons, the three being fitted for the transportation of both passengers and freight. Its steamers

ply exclusively between Fall River and New York City, touching, however, Jamestown, which is opposite Newport, Rhode Island.

For some time past the regular passenger fare between New York City and Fall River has been $3 during the summer and $2 during the winter months. The Enterprise Company established at the outset a rate of $1, which it has ever since maintained. Its representative stated that in his judgment this rate was fairly compensatory for the service and that his company was satisfied to do business on that basis. The New Haven Company has reduced its passenger rates to $1.50 at the present time between New York and Fall River. The testimony did not show what the effect of this reduction was between New York and interior points, nor whether the Enterprise Company carried passengers for such interior points.

The principal traffic from Fall River to New York is cotton-piece goods of various kinds and for many years the rate applied by the New England Navigation Company to this traffic has been 12½ cents per 100 pounds. The Enterprise Company established a rate of 10 cents per 100 pounds at the outset, which has been since continued. The bulk of the transportation by water from New York to Fall River is raw cotton and various mill supplies, and the Enterprise Company fixed its class rates and its local rate on raw cotton at 2 cents per 100 pounds less than that previously prevailing by the New England Navigation Company. It appeared from the testimony that these rates had been continued by the Enterprise Company and that the New England Company had not reduced its tariffs up to the time of the hearing. It further appeared that under this adjustment of rates the Enterprise Company obtained a considerable part of the strictly local business between Fall River and New York. The general manager of that Company testified that of 92 mills in Fall River his Company was then doing business with 85.

Freight from New England can reach the middle west by various routes. It may go by the direct all-rail route or by the more circuitous rail route through Canada. It may also be transported by water from New England to some southern port

like Norfolk or Baltimore and from there taken by rail to its destination. In the latter case the water line frequently pays and absorbs a local rail rate from the interior New England point to the seaboard. These competitive conditions have given New England the same class rates and to a considerable extent the same commodity rates as apply from New York City.

Confining our attention to traffic originating at Fall River, it is evident that this may either be delivered to the New Haven Company for shipment by its rail line or to some steamboat company for transportation by water. Since a comparatively small part of the freight traffic from Fall River stops at New York as a final destination and since a comparatively small part of that traffic to Fall River originates at New York as the point of original production it follows that the Enterprise Steamboat Company, if it obtains any great amount of business between these points, must make arrangements with the rail and water carriers leading from New York as to the handling of this business beyond that point. It seems to have been able to do this with water lines leading from New York south and the testimony indicates that it exchanges at New York City considerable quantities of freight with the Old Dominion Steamship Company. The quickest service between Fall River and the west is by boat from Fall River to New York and by rail from New York. Large amounts of traffic move by this route, which in the past has been exclusively handled by the New England Navigation Company. The Enterprise Company, desiring to participate in this business, and also in business moving in the opposite direction, has applied to the various rail lines asking for the same treatment which they accord to the Steamboat Company of the New Haven road.

The rate from Fall River to Chicago on cotton-piece goods is 55 cents, and from New York City the same. When this traffic is brought by boat from Fall River to New York and delivered to the rail carrier at New York there are two services, the transportation from Fall River to New York and the transfer at New York. The transfer charge is ordinarily reckoned at 3 cents per 100 pounds. The local transportation charge of the New Haven Company is 12½ cents, but it was said by witnesses

for the Enterprise Company that the trunk lines allowed the New Haven road 10 cents as its division. The transfer service is actually performed, sometimes by the New England Navigation Company and sometimes by the receiving railroad company, but in either case it is paid for by that company; that is to say, the railroad company which receives the cotton-piece goods from New England Navigation Company at New York in effect transports that traffic to Chicago for 42 cents; whereas, if those goods were delivered to the same company at the same place and under the same circumstances by the Enterprise Company the railway company would exact for its charge 55 cents per 100 pounds. This, of course, deprives the Enterprise Company of all possible opportunity of participating in that business.

The carriers gave various reasons for their refusal to join with the Enterprise Company in these through rates. The Pennsylvania states that its facilities are so congested in New York at the present time that it is only with great difficulty that it can handle the traffic now offered at that point; that if it received this traffic from two companies instead of one, whether it took the traffic itself or whether the traffic was delivered to it, more room would be required. The representative of that company further stated in substance that there was only so much traffic from Fall River of this character; that his company could not hope to receive any more business if it joined with the Enterprise Company, since what it received from that company would be subtracted from the amount which it was now receiving from the New England Company; and that, since it could handle the traffic better from one company than from two, he had declined to entertain the proposition.

The New York Central stated that this business was not desirable; that it had no arrangement with any steamboat line except the New England Navigation Company; and that with that company its arrangement only covered the four higher classes. It further stated that it would rather cancel its present arrangements with the New England Navigation Company than extend them to the Enterprise Company. It appeared in the case of the New York Central that the traffic was delivered to it

by team in New York City, where it was loaded into its cars. No reason was suggested why that company would suffer any inconvenience if it handled traffic for the Enterprise Company delivered to it in the same place and in the same manner.

The other companies, so far as they were represented by witnesses at the hearing, did not claim that they were unable to handle the traffic. Their statements were to the general effect that they preferred to receive this traffic from the New Haven Company by rail; that they only consented to handle it by water through New York as an accommodation to the New England Navigation Company and their patrons; and that they did not desire to form this connection with the Enterprise Company because they did not desire to increase the amount of this business which came from Fall River by water.

The general situation seems to be this. The New Haven Company controls the greater portion of the traffic within its territory. Most of this traffic, in the natural course of things, would go by the all-rail routes; a certain amount of it may go by water to New York and from there by rail. The lines leading from New York can receive this traffic from the New Haven Company either by rail or by water; they prefer to receive it by rail. At the present time the New Haven road is dividing this business between all these different lines in a satisfactory manner. By forming a connection with the Enterprise Company they would not increase the total amount of the traffic which they handle, and they might introduce a factor which would become a disturbing element in the present harmonious relations. They have nothing to gain, and possibly might lose something by the change.

The Enterprise Company claimed that the refusal of the rail lines to participate with it in through business was the result of an agreement between those lines dictated by the New Haven Company. The only evidence tending to show this directly was the declaration of an agent of the Delaware, Lackawanna & Western Railroad. The Enterprise Company, desiring to ship cotton-piece goods from Fall River to Chadwick, N. Y., and understanding that the above railroad company accorded to the New England Navigation Company a rate from New York of

$16\frac{5}{8}$ cents, while its local rate was $25\frac{1}{2}$ cents, applied for the same reduced rate. This the agent refused, stating that his company could only accord that rate to the New England Navigation Company by reason of an agreement to that effect with the New Haven Company. We could hardly find from the testimony that any similar agreement with other lines exists, although such may be the fact; and still less that there is any conspiracy among all these railroads to accomplish the thing complained of. It appears to us that the course of these railway lines may be justifiable upon sound business principles if the matter be examined solely from their standpoint.

How does the matter stand when examined from the viewpoint of the public? We have already seen that the Enterprise Company has been of great benefit to shippers and passengers using that line by reducing the rates formerly in effect. The complainant concedes that rates from Fall River to points in the west would not be reduced if the Enterprise Company were accorded the through privileges which it desires. Those rates are for the most part the same from New York and Fall River to Chicago and points basing on Chicago, or which take a percentage of the Chicago rate. To reduce the rate from Fall River would break down the whole scheme of rates. This does not appear to be true of rates to points east of Buffalo and Pittsburg, which are generally less from New York than from Fall River. In very many cases, at least, the rate from Fall River to those points would be less if the present local rate of the Enterprise Company were added to the present division of the rail line from New York. It does not appear whether a reduction would in fact result.

It was also said by the Enterprise Company that if that company could engage in this traffic its patrons would have two lines and would thereby secure more efficient service than otherwise. There was no testimony before us as to the character of the service by either of those steamship lines. It did appear that the Enterprise Company touches at certain wharves in Fall River to which some of the mills are peculiarly accessible and that these mills find it to their advantage, for this reason, to patronize that company rather than the New England Company;

and that it serves one town not directly served by its rival. It is also undoubtedly true that better and more efficient service is obtained when competition exists than when the business is entirely transacted by one concern.

The most serious feature of this case rests in the fact that if the New England Navigation Company can exclude the Enterprise Company from all participation in through business and confine it strictly to local business between Fall River and New York, it thereby acquires the power of forcing the Enterprise Company out of business altogether, for it may so reduce its rates on local traffic that this company could not meet them, while obtaining a lucrative and supporting business from through traffic. When the competition of the Enterprise Company had disappeared rates would be restored to what they formerly were, which, it fairly appears, was higher than reasonable competition would produce. The existence of the Enterprise Company as a competitive factor is of distinct value to the public, and that existence may depend upon its right to engage in through business. This is well illustrated by the last case in which this matter has been before the courts: *Gulf, C. & S. F. R. Co.* v. *Miami S. S. Co.* 30 C. C. A. 142, 52 U. S. App. 732, 86 Fed. 407.

Traffic from the Atlantic seaboard to various points in Texas, Indian and Oklahoma Territories and the Mississippi and Missouri Valleys passes largely by water from some port like New York to Galveston or New Orleans and is from thence carried by rail to destination. Prior to July, 1897, there was only one steamship line operating between New York and Galveston, known as the Mallory Line, and two between New York and New Orleans. Three different lines of railway with various connections led from Galveston into Texas and this other territory.

In the summer of 1897 the Miami Steamship Company, conceiving this field to be a promising one, determined to enter it, and put on a line of steamboats between New York and Galveston. At the outset the various railroads leading from the port of Galveston seem to have accorded to the Miami Company the same rates and privileges in substance which were given the Mal-

lory Line. The Miami Company, however, found it to its advantage to somewhat reduce the rates between New York and Galveston, and this operated to effect a reduction in rates throughout the territory above described, the shrinkage being in all cases in the ocean transportation from New York to Galveston. This created more or less dissatisfaction since these ocean and rail rates from New York are fixed with reference to the all-rail rates from the same points to the same destinations, and in the early part of 1898, the railroad lines leading from Galveston, the Mallory Line and the two steamship lines leading from New York to New Orleans entered into an arrangement by which it was, among other things, agreed that the railroad lines should break off all connection with the Miami Steamship Company.

Traffic between interior points and the Atlantic seaboard was handled by the various steamship lines in connection with the rail lines upon through bills of lading in both directions, and the through rate was divided between the water and the rail lines upon a basis which allowed to the rail line less than its local tariff from Galveston to point of destination. The railroad companies then declined to honor through bills of lading and also declined to form through routes upon the basis of the divisions hitherto in force. The Miami Steamship Company could, of course, transport the freight from New York to Galveston and there tender it to the railroad companies for transportation to destination, but the railroad companies exacted in all cases their local tariff and required the Miami Company to prepay the freight charges. In case of traffic going in the opposite direction, the railroad companies declined to issue any through bill of lading and required the shipper to prepay the transportation charge to Galveston, if the traffic was to go by the Miami Company.

It will be seen at a glance that under these conditions the Miami Company could not hope to participate in that traffic; for not only did it receive much less for the same service than its competitors, but the handling of the business by that line was so hedged about with difficulties as to make it almost impossible for the shipper to patronize its route. In view of this that Company applied to the Interstate Commerce Commission, but was advised that under the law that body could probably render

it no assistance. It thereupon filed a bill in equity in the circuit court for the eastern district of Texas alleging in effect that these different companies were not only in violation of the Act to regulate commerce, but were also in violation of the Sherman Anti-trust act, and praying an injunction. The circuit court granted the injunction, but the circuit court of appeals in an elaborate opinion dissolved the injunction and held that the Miami Company was entitled to no relief; that the railway companies might require the prepayment of their freight charges; that they were not compelled to enter into joint arrangements with one steamship company because they did with another; and that even if the anti-trust act was violated only the United States Government could maintain an injunction suit.

The result of this decision was that the Miami Steamship Company withdrew from that field, and that rates were restored to their former basis. The further result was that still later many of these rates were advanced, as appeared in testimony before the Commission, by the concerted action of the water lines and various railways, and that in consequence rates to Texas Common Points were also advanced.

This investigation was begun upon the understanding that the Commission had no power to grant any relief in the premises. The railroads have not been heard further than they were inquired of, to some extent, by the Commission itself. We do not think that under these circumstances we ought to express an opinion as to whether these rail lines should accord the Enterprise Company the through arrangements asked for, since it is evident that many things which might influence a final judgment were not developed in the hearing before us.

At the present time water competition exercises an important influence upon the rail rates of this country. That form of competition is less susceptible of control than transportation by rail, and many persons believe that the true policy of this country is found in the improvement and construction of waterways. If the legitimate benefit of such competition is to be had it is evident that some regulating body must exercise in our country, as does the English railway commission in England, the authority to establish through routes between water and rail carriers, or at least to prevent undue discrimination by rail carriers between connecting water lines.

No. 777.

J. W. MORAN & SON
v.
THE MISSOURI PACIFIC RAILWAY COMPANY and THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Complainant shipped two carloads of flour from Lamar, Mo., to Hope, Ark., by the St. L. & S. F. R. R. in December, 1903, under a milling-in-transit rate from Pennsboro and Everton, the same rate applying from Lamar, Pennsboro and Everton to Little Rock, Ark., and from that point the flour was carried by the St. L. I. M. & S. Ry. to Hope under the rate in force between those points applying on interstate shipments. This rate from Little Rock to Hope was 42 cents per 100 pounds for a distance of 112 miles, and is the subject of complaint. The Arkansas Commission rate in force on state traffic from Little Rock to Hope is 11 cents. The M. P. and the St. L. I. M. & S. had in effect a through rate from Lamar to Hope of 28 cents, and to this must be added a $3 per car switching charge from complainant's mill to the M. P. tracks in Lamar. The rate by the M. P. line from Lamar to Little Rock was 20 cents, the same as the rate by the St. L. & S. F. and its connecting line. Defendants subsequently reduced the charge on these carloads of flour from Little Rock to Hope from 42 to 24 cents per 100 pounds, refunding substantially the difference to complainant, and finally offered to reduce to the basis of a 19 cent rate applying from Memphis through Little Rock to Hope, which the tariff specified as the maximum charge between intermediate stations, but such offer of settlement was declined by complainant. This Memphis rate has since been increased to 20 cents. Upon all the facts and circumstances, *Held:* That the rate of 42 cents for this service between Little Rock and Hope on interstate shipments of flour was grossly unreasonable; that the rate of 19 cents was, and the rate of 20 cents is, as applied to such service, unreasonable and unjust; and that a reasonable and just rate therefor would be 11 cents per 100 pounds. Complainant awarded reparation.

Submitted November 1, 1905. Decided April 5, 1906.

J. B. McGilvray for complainant.

Martin L. Clardy, Elijah Robertson and *T. C. Jeffreys* for defendants.

Report and Opinion of the Commission.

Clements, *Commissioner:*

The issues presented in this case involve the reasonableness of the rates of the defendant, the Iron Mountain & Southern Railway Company over its line from Little Rock to Hope, Arkansas, on interstate shipments of flour in carloads. A claim for reparation on two shipments originating as grain at Pennsboro and Everton, Mo., and milled in transit at Lamar, Mo., and forwarded therefrom to Hope, Ark., is also involved.

For convenience and brevity, hereafter when the St. Louis, Iron Mountain & Southern Railway Company is referred to it will be designated as the Iron Mountain, and when the St. Louis & San Francisco Railway Company is referred to it will be designated as the Frisco, in accordance with the reference to the same in the testimony. The Missouri Pacific Railway will be designated as the Missouri Pacific. In all instances where freight rates are referred to, such rates will be understood as applying to the unit of 100 pounds on carload shipments.

The complainant firm is composed of J. W. Moran and J. H. Moran, and is engaged in milling grain at Lamar, Missouri, and purchasing grain at other points, shipping the same to Lamar, and the products thereof from Lamar to various southern points. Lamar is at a crossing of the Missouri Pacific and the Frisco.

Complainant shipped on through bills of lading issued at Lamar by the Frisco to Hope, Arkansas, consigned to Plunkett, Jarrell Grocery Company one carload consisting of 29,600 pounds of flour, December 12, 1903, and another consisting of 27,300 pounds, December 14, 1903. The weights given are those shown on the Iron Mountain expense bills. These shipments were carried by the Frisco and its connecting line to Little Rock and thence by the Iron Mountain to Hope. The ship-

ments could reach Little Rock over the St. Louis Southwestern or the Choctaw division of the Chicago, Rock Island & Pacific, but the testimony does not indicate which connection was used by the Frisco. The shorter distance would be 375 miles by the Frisco and Rock Island line via Mansfield. On these shipments the Iron Mountain collected from the consignees a total of $355.78, divided as follows: For the Frisco and connection from Lamar to Little Rock, 375 miles (short line) $116.80; for the Iron Mountain, from Little Rock to Hope, 112 miles, $238.98. The total rate for the entire distance, 487 miles from Lamar to Hope was a combination rate composed of the Frisco rate of 20 cents and that of the Iron Mountain for interstate shipments hauled by it from Little Rock to Hope of 42 cents per hundred pounds, making a total of 62 cents. The rate prescribed by the Arkansas Commission on flour in carloads, minimum 24,000 pounds, was at the time of these shipments and still is, from Little Rock to Hope, 11 cents. There was at that time in effect a joint through rate by the Missouri Pacific and the Iron Mountain from Lamar to Hope of 28 cents. The joint through rate over this route, composed of the Missouri Pacific from Lamar to Little Rock, and the Iron Mountain from Little Rock to Hope, has been increased two cents so that it is now 30 cents. There is no joint through rate over the Frisco and Iron Mountain.

There was in effect by the Frisco a milling-in-transit regulation which permitted the shipment of grain to Lamar from other stations on the Frisco, including Pennsboro and Everton upon local rates, with the privilege of grinding the grain at the latter place and shipping it thence to other points, or an equivalent amount of mill products, at the total through rate on grain from the point of origin thereof to the destination of the flour, or other mill products, shipped forward within six months. These two shipments of flour were made under this milling-in-transit arrangement in connection with prior shipments of wheat; two carloads from Pennsboro about July 13, 1903, over the Frisco to Lamar, and one from Everton about October 8, 1903. To Lamar the local rate from Pennsboro, a distance of 31 miles, is 7 cents, and from Everton, 37 miles, 7½ cents.

The complainant's mill at Lamar is located by the tracks of the Frisco and is a mile or more from the tracks of the Missouri Pacific, and there was a switching charge of $3 per car for transferring the carload of flour from this mill across to the Missouri Pacific. This switching charge is still in effect.

The through rates on both wheat and flour from each of these places, Lamar, Pennsboro and Everton, as well as a number of other points in the same territory by the Frisco line to Little Rock was at the time of these shipments 20 cents. The rate from Lamar by the Missouri Pacific to Little Rock was also 20 cents on both wheat and flour, and as above stated was by this line and the Iron Mountain 28 cents from Lamar to Hope. Had these shipments of flour from Lamar been made by complainant over the Missouri Pacific and Iron Mountain through route, the through cost of transportation to it from points of origin of the wheat would have been from Pennsboro the local to Lamar, 7 cents, plus the through rate from Lamar to Hope, 28 cents, total 35 cents; and from Everton to Lamar, 7½ cents local plus 28 cents from Lamar to Hope, total 35½ cents. In addition to this there was a transfer charge of $3 per car before mentioned. The through rate from all of the points of origin above mentioned by the Frisco to Little Rock being 20 cents, the combination through rate from the same points of origin to Hope by adding to the above rate of 20 cents the local Arkansas Commission rate of 11 cents over the Iron Mountain from Little Rock to Hope would have been 31 cents. The milling-in-transit arrangement of the Frisco was available only when the flour moved over that road, and this indicates the reason for routing the flour from Lamar by the Frisco.

Upon protest by the complainant the Iron Mountain refunded $97.86 to it upon the basis of applying the St. Louis rate to Hope as a maximum for the haul from Little Rock to Hope, Little Rock being an intermediate point between St. Louis and Hope.

Complainant not being satisfied with this as the proper adjustment of the matter, the Iron Mountain then offered to further refund on the basis of the rate of 19 cents from Little Rock to Hope, this being the Memphis rate to Hope, and Lit-

tle Rock being intermediate. This offer was rejected and complaint filed.

The defendant, the Iron Mountain, as stated, offers to refund from the charges made on these shipments on the basis of the Memphis rate of 19 cents.

In the published tariffs, effective at the time these shipments were made in 1903, it is provided "that the Distance Tariff rates applying on interstate traffic between stations in Arkansas and stations in Missouri will apply between stations in Arkansas on all traffic (where joint tariff rates are not provided), when received from or delivered to connecting carriers and the point of origin or destination is outside the State of Arkansas, regardless of whether or not the service performed by this company is exclusively between points within the State of Arkansas." The tariff referred to names mileage rates between stations in Arkansas and stations in Missouri on the Iron Mountain, and under the provision quoted would apply from Little Rock to Hope on shipments originating outside the State of Arkansas in the absence of through rates, but there is found in another tariff containing rates of the Iron Mountain from Memphis, Tennessee, to Hope, Arkansas, the following provision: "The rates named herein will be applied between intermediate stations when less than established or distance tariff rates." The through rate named in this tariff from Memphis to Hope on flour was at the time of the shipments in question 19 cents. This is the basis of the proposed refund which the Iron Mountain has offered to make to the complainant.

The rate from Lamar to Little Rock has been advanced to 22 cents by both the Missouri Pacific and the Frisco, and the rate from Lamar to Hope by the Missouri Pacific and Iron Mountain has been advanced to 30 cents, minimum weight 24,000 pounds. The present rate from St. Louis, Mo., to Hope, by the Iron Mountain, a distance of 450 miles, is 25 cents, and from Memphis to Hope, a distance of 260 miles, 20 cents. There are also in effect by this road rates on flour in carloads as follows:

	Cents.
Memphis to Knobel, Ark. (181 miles)....................	9
Memphis to McAlmont, Ark. (141 miles).................	9

The same rate applied to Bald Knob, Ark. (91 miles), the point of connection of the Memphis line with the main line, and also applies to all local points on the main line between Knobel and McAlmont.

	Cents.
Cairo, Ill., to Knobel, Ark. (106 miles)	12
Cairo, Ill., to O'Kean, Ark. (122 miles)	12

Points between Knobel and O'Kean also take rate of 12 cents.

	Cents.
St. Louis to Avery, Ark. (185 miles)	14
St. Louis to McAlmont, Ark. (338 miles)	14

The same rate also applies to all points between Avery and McAlmont.

Over 99 per cent of the capital stock of the Iron Mountain is owned by the Missouri Pacific, and the personnel of the official management of the two roads is in the main the same.

We further find from the foregoing facts, first, that the rate of 42 cents and the reduced rate of 24 cents charged by the Iron Mountain for the transportation of the shipments mentioned from Little Rock to Hope were unreasonable and unjust; second, that the rate of 19 cents for the transportation of said shipments from Little Rock to Hope by the Iron Mountain is unreasonable and unjust; and third, that the rate of 20 cents, stated by the Iron Mountain as applicable to the transportation by its line of flour, in carload lots of interstate shipments, from Little Rock to Hope is unreasonable and unjust.

We further find that 11 cents per 100 pounds for the transportation of such shipments from Little Rock to Hope is a just and reasonable rate and was at the time of the shipments involved in this case a just and reasonable rate for the transportation of the same from Little Rock to Hope, and that the charges collected from the Iron Mountain therefor were unreasonable and unjust to the extent that the same exceeded 11 cents per hundred pounds on said shipments, and that the complainant is entitled to reparation in the amount of such

excess, after deducting the amount which has already been refunded to them, with interest from January 25, 1903, this being the date when said charges were collected.

Upon the basis above set forth, we find the principal amount of said reparation due to be $78.53.

CONCLUSIONS.

We think it manifest from examination of the foregoing facts that the rate charged by the Iron Mountain for the transportation of flour from Little Rock to Hope, applicable to shipments from without the State of Arkansas received by that road at Little Rock from connections other than the Missouri Pacific, greatly in excess of the local rate applicable to shipments originating at Little Rock, was intended to encourage shipments by the Missouri Pacific and to discourage them by other lines, and is unreasonable and unjust. While a carrier under the law may decline to join with its connections in the making of joint through routes and rates applicable thereon, or may join in such arrangements with one connection and refuse to do so with another, no carrier can for any reason or purpose lawfully exact unreasonable and unjust rates for any service which it may perform in the transportation or handling of interstate traffic. The service performed by the Iron Mountain, as stated in the findings of fact, in the continued transportation from Little Rock to Hope of shipments from points outside the State of Arkansas to Hope is the transportation of interstate traffic.

There is no proof tending to show that the rate of 11 cents for the services shown in the findings in this respect fixed by the Railroad Commission of Arkansas is insufficient or unduly low. We can not assume that it is; much less can we assume that it is so grossly insufficient as to justify nearly double that rate for exactly the same transportation service performed in respect of interstate traffic received from any other connection than the Missouri Pacific.

It is our conclusion that the Iron Mountain should be directed to cease and desist from enforcing and collecting its present

rates herein found to be unreasonable and unjust for the transportation of flour in carload lots from Little Rock to Hope on interstate shipments received by it at Little Rock, and to pay to complainant the amount of reparation herein found to be due. An order will be entered to this effect.

PLANTERS' COMPRESS COMPANY
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY and MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF TEXAS.

Decided April 6, 1906.

The application by defendants of uniform rates on cotton in any quantity and their refusal to concede lower rates based upon car loadings was not in violation of the regulating statute. *Planters' Compress Co. v. Cleveland C. C. & St. L. R. Co.* 11 I. C. C. Rep. 382 cited and applied.

Felix Rackemann and *F. S. Goodwin* for complainant.
J. W. Allen for defendants.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman:*

This case involves certain rates on cotton, as will be hereafter explained, and is similar to the one decided by the Commission in October, 1905. *Planters' Compress Co. v. Cleveland C. C. & St. L. R. Co.* 11 I. C. C. Rep. 382.

The findings in that case describe with considerable detail the various modes of preparing cotton for transportation, the differences between square bales and round bales in size, density and other characteristics, including the mechanical devices by which they are respectively produced, the practicable car loadings resulting from different methods and degrees of compression, the system of rates applied to cotton shipments and other like matters pertaining to the movement of this commodity. These findings, so far as applicable, will be deemed a part of this report and need not be repeated. The facts peculiar to the case in hand appear to be as follows:

The first named defendant operates a line of railway extending from a point on the Red river in Indian Territory, opposite Denison, Texas, through that territory and the states of Kansas and Missouri to the city of St. Louis, with branches to various points in the states named. The other defendant operates a line of railway from Denison, Texas, to Houston, Texas, with various branch lines in that state. Upon the lines described, and particularly at points in Indian Territory, a large amount of cotton originates which moves to St. Louis on the way to final destination. It is to this movement that the complaint in the present case is specially directed.

Certain stations in this district are referred to by complainant from which the distances in miles, and the rates to St. Louis and East St. Louis in cents per hundred pounds, are as follows:

STATIONS.	DISTANCES.	RATES.
South McAlester	563	70
Eufaula	536	70
Checotah	522	70
Gibson	492	65
Wagoner	486	65
Choteau	470	65
Prior Creek	461	65

At South McAlester, which is an important point for the concentration of cotton, there are one or more square bale compress plants, but no plant of this kind appears to be in operation at any station in Indian Territory north of that point. At the other stations named, all of which are nearer St. Louis, there are round bale plants of the type owned or controlled by complainant.

The above rates apply on uncompressed cotton, that is, cotton in the flat or plantation bale form, with carrier's option of compressing *en route,* and a uniform allowance of ten cents per hundred pounds is made for compression, when the cotton is actually compressed, whether by the square bale or round bale process. Formerly the full uncompressed rate was collected in the first instance, the allowance for compression being afterwards refunded; and this was one of the grounds of complaint

in this proceeding. This requirement, however, was dispensed with by tariff filed September 10, 1903, and since that time in effect, which provides as follows:

"Rates on cotton in cylindrical bales, compressed, will be 10 cents per 100 lbs. less than rates shown above and no compress charges will be paid on such cotton.

"When cotton is delivered to carrier in compressed condition and compress charges on such cotton have been paid by the owner, the rate to be applied thereon shall be made by deducting 10 cents per 100 pounds from rates shown above as applying on cotton with carrier's option of compressing."

Complaint was also made that a system of estimated weights was in use which operated to discriminate against round bale shipments. This may have been the case at one time, and perhaps for a considerable time, but the hearing disclosed that any practice of this sort had been discontinued and that rates are now applied on the basis of actual weights. The current tariffs so provide and the uniform usage appears to be in accordance therewith. It is not believed that there is any present injustice in the matter of weights which requires correction.

Round bale cotton is completely prepared for transportation by a single process and is shipped directly to destination from the local stations where round bale plants are in operation. Square bale cotton on the other hand is produced by compressing the flat or plantation bale, and this ordinarily involves the transfer of such bales from the local stations to concentration points, relatively few in number, where square bale plants are established. These plants are often at somewhat greater distance from final destination than the local points where the cotton originates. This results in many cases in a primary movement of the uncompressed cotton in an opposite direction from the market to which it is destined and a forward movement of the compressed cotton through the point of origin, or what is known as "back hauling."

The tariffs of the M. K. & T. and its circular of instructions to agents contain specific and detailed provisions for the shipment of cotton and name the points in different sections where it may be concentrated. For example, at South McAlester cotton

may be compressed from all stations north of Durant, including Wilburton branch and Tulsa division; also from points on the Shawnee division south of Ada. Durant is 75 miles south of South McAlester; the local stations named above are north of that point as already stated. Consequently, from those stations the flat or plantation cotton may be and is hauled back to South McAlester for compression into square bales, and then the same cotton, or an equivalent tonnage of the compressed article, may be and generally is moved forward through the points of origin on its way to ultimate destination.

For this extra service in handling the cotton through the concentration point no additional charge is made in any case. The rate actually paid by the shipper is the through rate from the local station where the cotton originates to the market where it is carried, whatever may be the rate to the same market from the point of concentration. Usually, as we understand, a published local rate is paid on the movement of the cotton to the compress point the amount of which is credited upon the through rate from point of origin when settlement is made with the shipper. There is of course no back hauling of the cotton baled by complainant's process and apparently no occasion for substituted billing.

The foregoing describes the only material respect, so far as we perceive, in which this case differs from the one heretofore decided. It appears in this case as in the other that rates on cotton in cents per hundred pounds are uniformly the same between the same points without regard to the quantity shipped. There are no carload and less than carload rates and no difference is made between square bales and round bales. A given quantity of compressed cotton, whether large or small and however prepared for shipment, is carried at a common rate to a common destination.

Cotton baled by complainant's process has about double the density of square bale cotton and therefore weight for weight occupies only about half as much space. Square bale cotton as usually offered for transportation loads conveniently about 25,000 pounds in a standard box car; the same car can be readily loaded with 50,000 pounds of round bale cotton. The carriers

refuse to accord lower rates to round bale cotton because its greater density permits so much heavier car loadings or for any other reason, and this refusal is the real ground of complaint in this as in the former proceeding. The back hauling feature of this case is merely an incident of square bale compression which of itself is of no particular concern to complainant, since the only thing really wanted is a change in the system or basis of cotton rates so that in place of a uniform rate on any quantity there shall be one rate on cotton as ordinarily prepared for transportation and a lower rate when it has a density which permits say 45,000 pounds or more to be loaded in a car. In other words, the substantial demand is for a carload differential which would operate as a practical matter to complainant's advantage. All this was explained in the previous decision to which reference is again made in this connection.

It should perhaps be here mentioned that the saving to these defendants by reason of increased car loadings of cotton would be comparatively slight, according to their contention, because of the preponderance of empty car movement on their lines in the direction of St. Louis. Their testimony was to that effect and nothing was shown to the contrary. This being the fact it would seem that heavier loadings of compressed cotton would not materially reduce the cost to these defendants of transporting that commodity.

Conclusions.

The only question of importance in this case was decided a few months ago in a similar proceeding brought by the same complainant. It was then held by the Commission, one member dissenting, that the application of uniform rates on cotton in any quantity and the refusal to concede lower rates based upon car loadings did not constitute a violation of the regulating statute. The reasons for this conclusion were set forth at considerable length in the report and opinion in that case and there is no occasion to repeat the observations therein made. The gist of the ruling is indicated by the following extract:

"If the rate on a given article is reasonable to those who ship

the great bulk of that article in the form in which it is commonly prepared for transportation, that rate in our opinion does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per 100 pounds. Particularly is this so, as we think, when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons."

Complainant is the owner of a patented device for compressing cotton to a high degree of density, and the practical result of sustaining its contention would be, as it seems to us, to give it great advantage as a dealer in cotton or require other shippers to use the process which it controls. Without renewing the argument it is sufficient to say that the views expressed in the former case are adhered to by a majority of the Commission and are regarded as controlling the disposition of this proceeding. The "back hauling" feature described in the foregoing findings is not believed to materially affect the real question at issue or to furnish any ground for distinguishing this case from the one previously decided.

The reasonableness of the rates named from points in Indian Territory to St. Louis and East St. Louis as applied to uncompressed cotton, including the allowance for compression, is not presented by this record and has not been considered, nor will the determination of that question in any future proceeding be precluded by what is said or decided in this report. We merely hold that complainant is not entitled to a differential rate and are of the opinion that its contention in that regard should not be sustained.

PROUTY, *Commissioner*, dissenting:

South McAlester is upon the main line of the Missouri, Kansas & Texas Railway 563 miles south of St. Louis, and Prior Creek is upon the same line of railway 102 miles farther north; that is 461 miles from St. Louis. The rate on uncompressed cotton from South McAlester to St. Louis is 70 cents; from Prior Creek 65 cents.

In point of fact cotton is never transported, and as a practical matter never could be transported, from either of these stations to St. Louis in its uncompressed form. Cotton received for shipment at Prior Creek is carried in the uncompressed state to South McAlester, compressed at South McAlester where is located a square-bale compress, and then shipped to St. Louis back through Prior Creek. The cost of compression is ten cents per hundred pounds, which is paid by the carrier out of the 65 cents; or the shipper may, at his election, ship the cotton to South McAlester, pay for compression himself, and send it back through Prior Creek at a total expense of 55 cents for the transportation.

The complainant has a Lowry press at Prior Creek and offers to the defendant railway company cylindrical cotton at that point for shipment to St. Louis. When the complaint was filed the only published rate was the 65 cents on uncompressed cotton but today there is a rate of 55 cents on compressed cotton, being the same rate which the shipper of square-bale cotton can obtain by sending it through South McAlester. Uncompressed cotton loads six tons to the car, square cotton twelve tons, and cylindrical cotton twenty-five tons. The complainant insists that the tariffs of the defendants are unlawful: First, because they charge it the same price for the haul from Prior Creek directly to St. Louis which they charge for the long haul from Prior Creek through South McAlester: Second, because the charge imposed upon its shipment is unjust and unreasonable.

The Commission has approved the practice of "floating cotton." *In the Matter of Alleged Unlawful Rates and Practices in the Transportation of Cotton,* 8 I .C. C. Rep. 121. According to that case cotton might be shipped from Prior Creek to South McAlester, stopped off at South McAlester for the purpose of compressing and grading, and then sent on to destination at a rate equivalent to the through rate from Prior Creek to the point of final delivery. The practice of "back-hauling" was not considered, but I see no good reason why that may not be justified by competition as well as any other rate adjustment which entirely disregards distance or results in a higher charge for the shorter haul.

The opinion of the Commission states that this case is controlled by our decision in the former Cotton Bale case. This may be true, but since the fault of that decision somewhat more clearly appears upon the facts of this complaint than in the original case, I wish to restate the precise point of my dissent without attempting to discuss the principles involved.

It is, in my opinion, the business of this Commission to so adjust freight rates as will lead to the greatest economy in the handling of the cotton crop—one of the most important in the United States. In so doing it is no part of our duty to consider whether our decision is for the advantage or the disadvantage of some particular form of cotton compress. The facts before us well illustrate my position.

The practice of floating cotton is of fundamental importance to the square compress, since the cost of constructing that compress is such that it can only be erected at comparatively few points, while the cylindrical compress can be set up almost anywhere. To deny the right of floating cotton would more seriously injure the square compress than would the differential for which the complainant asks. But since our concern is not with different forms of compresses, but with the interest of the public as a whole, and since the floating of cotton is in the interest of the general public, it seems to me that this practice should not only be permitted, but extended within all suitable bounds.

My dissent from the decision of the majority is not because that decision declines to establish a differential between the cotton of the complainant and square cotton, but because it imposes upon the cotton offered for transportation by the complainant an unjust and unreasonable rate and therefore finally imposes upon the general public an unnecessary burden. The defendant charges the complainant 55 cents per 100 pounds for transporting cotton which will load 50,000 pounds to the car, from Prior Creek to St. Louis, and the complainant insists that this rate is unjust and unreasonable. I think it is clearly too high, and I dissent from the decision of the Commission that it should not be reduced.

This Commission has recently conducted a most elaborate inquiry into the cost of the construction and operation of the rail-

road of this defendant. We have from that investigation as full testimony as we can ever expect to possess of all those facts bearing upon the general reasonableness of the rates of this company. We ought to be at liberty to use those facts in this case and if so I have no hesitation whatever in saying that they conclusively show that to impose a rate of 55 cents per hundred pounds for the movement of one of the great staples of this country which loads 50,000 pounds to the car for a haul of 451 miles is unjust and unreasonable. This rate for an average haul of 500 miles would yield 2.2 cents per ton mile, which is probably twice the ton mile revenue of this company from the movement of commodities of similar density which are transported in large volume.

But if it be improper to go outside this record we still have in the conduct of the defendant itself the most sufficient ground for holding this rate unjust. It appears that the rate now and for some time charged for the transportation of cotton from Prior Creek to St. Louis has been 65 cents per hundred pounds, uncompressed. Now it can be shown both from the reason of the thing and from the testimony of numerous railway experts given before this Commission that if 65 cents is a reasonable price for transporting a commodity which will load but six tons to the car 55 cents is utterly unreasonable for a commodity of the same nature which loads twenty-five tons to the car.

It can with truth be said that the defendant has never transported this commodity under that tariff in its uncompressed form and, that, therefore my deduction is unfair. What has in fact been done is this. The defendant has carried this cotton 102 miles in its uncompressed form to South McAlester, has paid 10 cents for compression and has carried it from South McAlester, a distance of 563 miles to St. Louis for 65 cents. That is to say: It has hauled four carloads of cotton from Prior Creek to South McAlester and two carloads of cotton from South McAlester through Prior Creek to St. Louis for the price which it charges this complainant for handling one single carload from Prior Creek to St. Louis. It would be difficult to find testimony more persuasive that the rate charged this complainant is utterly unreasonable than the long continued conduct of the defendant.

It is said by the majority that no opinion is expressed as to the reasonableness of the rate of 65 cents on uncompressed cotton from Prior Creek to St. Louis. The necessary conclusion from the decision is that the complainant may, if it can, show that this rate is too high, but that otherwise it cannot show that its rate of 55 cents is exorbitant.

It is exactly from this that I dissent. The complainant does not attack the rate of 65 cents on uncompressed cotton; it could not, in my opinion successfully show that this rate was unreasonable. What it seeks to show is that a rate of 55 cents applied to its commodity, loading 50,000 pounds to the car, is unreasonable; and what I dissent from is the holding that complainant cannot even be heard on this proposition, unless it first demonstrates that a rate of 65 cents is too high when applied to the movement of a commodity loading but 12,000 pounds to the car.

No. 768.

J. J. MARLEY & SON

v.

NORFOLK & WESTERN RAILWAY COMPANY; HOCKING VALLEY RAILWAY COMPANY; and LAKE ERIE & WESTERN RAILROAD COMPANY.

Decided May 7, 1906.

There are two routes over which coal may be shipped from the Thacker district in West Virginia to Alexandria, Ind., one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N. & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., 8 carloads of coal from the Thacker district, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. *Held:* That the rate charged is not shown to have been unreasonable, and that in view of their published tariff the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line.

J. J. Marley for complainants.
Perkins Baxter for Norfolk & Western Ry. Co.
John B. Cockrum for Lake Erie & Western R. R. Co.
C. O. Hunter for Hocking Valley Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman:*

The complainants bought from a firm in Detroit, Mich.,

eight carloads of coal, which were shipped from Glen Alum, W. Va., on the Norfolk & Western Railway, to Alexandria, Ind., during August, September, October, and prior to November 26, 1903, over the Norfolk & Western, Hocking Valley, and Lake Erie & Western roads at the published rate of $1.90 per net ton. During this period the rate via the Norfolk & Western and Cleveland, Cincinnati, Chicago & St. Louis roads was $1.65 per ton. Complainants claim that the rate of $1.90 was unreasonable and unjust, and that it should not have exceeded the rate of $1.65 in force by the other line; and they demand reparation in the amount representing the difference in the two rates.

The coal was purchased delivered on board cars in Alexandria, the point of destination. The freight was paid by the complainants and deducted by them when they paid the Detroit firm for the coal. The complainants have therefore really brought the case on behalf of the selling firm in Detroit. In making the sale to complainants the agent of the seller understood that the $1.65 rate would be applied. When the first car was received complainants protested against paying the $1.90 rate, and efforts were made through the agent at Alexandria to secure a reduction in the charge on the basis of the $1.65 rate, but without avail. Apparently the complainants are located upon or near the right of way of the Lake Erie & Western road and have a special reason for getting their coal over that road, but upon this point the testimony is not very clear.

According to the Railway Guide mileage, the distance by the route used is 475 miles, while that over the N. & W.—C. C. C. & St. L. route is 447 miles. On November 26, 1903, after these shipments were made, the Norfolk & Western, Hocking Valley and Lake Erie & Western line reduced the rate to $1.65, which is still in effect. The rates over the above lines remained the same until June 1, 1904, when the N. & W.—C. C. C. & St. L. line lowered the rate to $1:55. The rate from Glen Alum to Chicago, 556 miles, short line distance, is $1.90, equal to 3.4 mills per ton mile. The $1.90 rate to Alexandria yielded a ton mile rate of 3.8 mills over the Lake Erie & West-

ern route, while the $1.65 rate afforded 3.7 mills over the N. & W.—C. C. C. & St. L. line. Over the Lake Erie & Western route the $1.65 rate gives about 3.5 mills per ton per mile.

No other material evidence was presented, and we are practically confined to consideration of the rate itself, as applied to the route in question, and the fact that a lower rate was in force over a shorter line, which has since been made effective on this route, while the short line has also reduced its rate.

We cannot find upon this record that the rate of $1.90 over the defendants' line was an unreasonable charge. There is no provision in the law requiring that rates shall be the same over all lines between the same points, and the existence of a lower rate by the short line in this case, while having some bearing, does not of itself indicate the unreasonableness of a higher rate by the route actually used. The rates by both lines were published, there is no showing that the use of the cheaper route was denied to these shipments, and if the carriers in the through route over which the coal was transported had granted a rebate on this coal to the basis of the $1.65 rate over the competing line while they had the $1.90 rate in effect over their own line, they would have been guilty of a penal offense under the statute. The complaint must be dismissed.

11 I. C. C. Rep.

No. 852.

JAMES E. EATON *v.* CINCINNATI, HAMILTON AND DAYTON RAILWAY COMPANY.

Decided August 3, 1906.

In September, October, and November, 1905, defendant unjustly discriminated in furnishing cars for hay and grain shipments against the complainant and in favor of other shippers including the operators of an elevator. Complainant awarded reparation in the sum of $200.

W. H. Snook and *Thomas Parks* for complainant.
Charles McPherson for defendant.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The cause of complaint in this case is the alleged failure and refusal of defendant on and since September 20, 1905, to furnish complainant cars on demand for shipment of hay and other produce, and that while thus delaying complainant from twenty to thirty days defendant did furnish his competitors cars on orders subsequent to his own, forcing the sale of part of his produce to competitors, to his damage from this cause and from impaired business of $1,000, for which he asks reparation. To these allegations defendant enters a general denial.

FACTS.

The complainant at Grover Hill, Paulding County, Ohio, has

been a local buyer and shipper of hay and grain at that point since December, 1904. Engaged in the same business at this station are the McMillen Grain Company, the Churchill or United Grain Company, and Raby Brothers. The United Grain Company has an elevator at Grover Hill, and bought and shipped only grain during the season covered in the complaint—September, October, and November, 1905. The McMillen Grain Company has an elevator at Grover Hill as well as at Roselms, three miles east, and one at Mandale, six miles east of Grover Hill, and buys, sells, and ships hay, straw, and grain at all seasons of the year when produce is moving.

At neither of the two latter points is there a station, but only what is known as a blind siding, and the cars used at these points are under the control of, and assigned by, the resident agent at Grover Hill.

The complainant, whose farm is just outside the corporation limits of the town of Grover Hill, was what is known as a track buyer—that is, he buys of neighboring farmers for delivery from wagons onto the cars, with a little storage room in sheds on his farm, and in the town a rented stable or two, with but small storage capacity, estimated at about two carloads. The first venture of complainant, of which there was no positive record, seemed to have been in December, 1904, continuing his shipments until the following spring. The condition of the country roads interfering with the handling of the produce, and later the season's agricultural work keeping the farmers' teams employed, led him to postpone operations until the fall of 1905. The establishment of a regulation by defendant company requiring that the carload minimum for grain must be 10 per cent above marked capacity of the cars, and his shipments of corn being made unshelled, the difficulty and risk of attempting to load corn on the ear above the marked capacity of the car led him to abandon its handling. The elevators, shipping shelled corn only, were not embarrassed by the new order.

The complainant testified that he paid 1 cent higher for oats, 8 cents per 100 pounds more for corn, and 50 cents to $1.25 more for hay than the prices given at the elevator.

About September 20 complainant gave notice to defendant's

agent that he desired cars for interstate shipments. Receiving none he continued almost daily to apply to the agent who informed him the McMillen Grain Company had a standing order for 20 cars, whereupon complainant gave a like order for 20 cars, saying he would require cars "right along to ship." On October 14 complainant received his first car, and until the filing of this complaint received but two foreign cars, one of which was shipped to Franklin and the other to Pittsburg, Pa. The other seven cars furnished were cars of defendant or system cars, which the agent refused to bill off the line of defendant's road and which were shipped to Toledo. Meanwhile complainant had secured an option on 4,000 bushels of oats, which he was unable to ship for lack of cars, and he was forced to abandon the deal, and these oats were handled by two elevator companies who secured cars, and at the current prices complainant estimated a loss of 2 cents per bushel. He has purchased eight or ten cars of hay, actually receiving eight carloads, but waiting for cars to dispose of such produce as he had secured did not make further purchases, though he declared he could have handled 100 carloads if defendant had given him the cars he demanded. These cars held from 10 to 14 tons of hay each, on which the current profits were nearly $1 per ton, or as he calculated about $9 per car. The complainant received no cars in September, but in October of 1905 one car for grain and four for hay, and in November one car for grain and three for hay.

The McMillen Grain Company received 135 cars in August, 68 in September, 66 in October, and 66 in November. This company had on hand at their three elevators about 10 cars of hay and grain September 1, 1905; on October 1, 23 cars of hay, 4 of paper straw, and 11 of grain, with 50 or 60 cars of hay engaged but not hauled; on November 1 about 39 cars, and December about 40 of hay, straw, and grain. The elevator company rarely bought grain ahead, though sometimes agreeing to take a client's entire holding. The agent of defendant when asked, upon the stand, if he was not furnishing cars to the McMillen Company, said, "As fast as they come in." There was no wide variation in the testimony, the only question being

whether the agent exceeded or abused his authority in the assignment of empty cars to soliciting shippers. His explanation of the method by which he determined the quota of cars for the respective shippers was that by taking the total shipments of a previous year he found that there had been 691 cars shipped, of which the McMillen Company shipped 546 and the complainant 22, and on this basis complainant was only entitled to one in 31 or 32 cars, but this statement was made up from the yearbook of waybills from December, 1904 to 1905.

This agent had only been in charge since February, 1905, and did not know whether complainant had shipped any cars previous to December, 1904, and only ascertained after testifying in this case that the office records of the previous year were lost. The period for which he made his supposed calculation included the months of September, October, and November, 1905, the very time he was refusing the complainant cars, and therefore was not a basis for that refusal, and the calculation, having been made after the beginning of the suit, was certainly an afterthought in defense of his action. The more plausible reason he advanced was that the elevator company was not only at great expense but had its produce in sight, and was therefore entitled to more consideration and more cars than the track buyer. Whenever he wandered from that line of defense he was not clear. He gave as one reason why no cars were furnished the first month "the rain coming on in September, the roads were too bad to do any hauling, and I knew he could not possibly load a car if I would give it to him. The elevators having nothing of this kind to contend with, their grain and hay is coming in all the time."

He told complainant about October 20 that he had only about six foreign cars in the previous month, and complainant returning and reporting five or six then on the track, he asked what business complainant had looking for cars; that he had to protect the elevators; that if there was a surplus complainant might be furnished. Most of the cars supplied at Grover Hill at this period were such as came in loaded or were emptied there and assigned to shippers. One car coming in loaded with wire was promised complainant by this agent, but the next day de-

nied him on the ground that it would have to go home empty, and then was given to the elevator. The agent said he did not tell the complainant he had promised it previously to Mr. McMillen—"that would have caused a quarrel." On another occasion a car was taken from the elevator track and turned over to the complainant, and another time a car loaded with cement, which complainant was told by the agent would not be sent east, was given to other parties to load for Pittsburg; but the agent naïvely said that, in answer to complainant's question as to whether that car would run east, "in order to avoid any controversy or words in parley with him, I told him no."

In the two months in which complainant was furnished cars the amount of produce on hand in the elevator was fairly constant—that is, 7 or 8 cars of hay, 9 or 10 of straw, and 5 or 6 of grain in sight on the first of each month, with other lots of hay purchased but not hauled in. The shipping then at the elevator was practically the same as that of any other track buyer. The loads of hay were hauled in and loaded directly into the cars, taking some from that on hand when necessary to make the carload of similar grade.

Another elevator at this station, Churchill Brothers, or the United Grain Company, received 3 cars for grain in each month of September, October, and November, and there was no intimation that they desired more. Another track-buying firm, Raby Brothers, shipping hay, received 12 cars in September, 1 in October, and 2 in November, and if they suffered by reason of shortage in cars it did not appear in the evidence.

There was given the McMillen's, in September, 29 cars for hay and straw and 39 for grain; in October 22 cars for hay and straw at Grover Hill, and 24 for grain, with 20 cars for the elevator sidings beyond; and in November 33 cars for hay and straw and 33 for grain—66 for each of the two latter months and 68 for the first.

Conclusions.

The theory of the defendant's agent, that the cars should go day after day as they did from September 20 to October 14,

1905, to the shipper with most produce in sight, would prevent any resident farmer from securing a car, since the elevator was always in sight. The proportion of cars of 1 to 31 or 32, which as an afterthought the agent advanced as defense based on the previous year's shipment, was violated by giving the elevator nearly 60 cars from September 20 to October 14, before he had given complainant 1.

The facts leave no question in our minds that unjust discrimination was practiced against complainant, but the difficulty of measuring the actual damages by way of reparation shows the importance of reasonable rates and equal treatment, since there can be no adequate reparation which will repair the wrongs to a shipper which injustice may work. That the complainant has been damaged in this case by unfair treatment is clear, but to measure that damage in a way to make him whole—to reimburse him for lost time, or injury to his business, for lost profits, and the loss of prestige and standing with his neighbors, in canceled contracts and voided sales, in losses of capital employed—and at the same time be fair to the defendant railway, is not only difficult but impossible. The best that can be done is to estimate as nearly as may be that which may with reasonable certainty be directly charged to such unfair treatment, and for the rest the complainant must suffer, as is always the case where injustice is done by such discriminations.

The claim as stated above—$1,000—makes no allowance for the difficulties under which the defendant line labored in the matter of car shortage, which was real and serious and was not confined to that locality. But the complainant had secured 4,000 bushels of oats, and when he could get no cars he had to release the oats, which were sold to the elevator people, and they got the cars in which to ship. This was manifestly unjust to complainant. There was no very radical difference in the methods of hauling the produce in these months. The corn crop was not coming in. The elevators bought grain for the most part as it was brought to the elevator, and this was a convenience to the neighborhood since it found a market always open for the disposal of its produce. On the other hand the prices offered, according to the testimony of the complainant

which was reasonable and undisputed, left such seductive margins as to tempt the efforts of the track buyers, who naturally at the same figures would have little chance of competing with the established elevator as a place for the farmers to dispose of their crops.

The complainant declared that he paid 1 cent per bushel more for oats, 8 cents per 100 pounds for corn, and from 50 cents to $1,25 more per ton for hay, though he implied that was a matter of judgment as to quality and that the difference in opinion as to grade might sometimes be the other way. These higher prices were an advantage to the community, but are to be expected where a fixed and expensive plant is to be maintained such as elevators and constant attendance of a clerical and laboring force with the necessary capital at command to buy at all times. With all the advantages which an elevator may prove as a home market to the community, and which may accrue to the railroad from a large and constant shipper, it does not justify the agents of the line so favoring such an establishment in the matter of facilities of transportation as to practically put other would-be shippers out of the business.

The elevator received 68 cars in September, 66 each in October and November; that is, 132 cars for the months of October and about 22 for September after the 20th, when complainant made his first application for cars, a total of 154, while complainant received but 9. This only establishes the fact that the agent of the defendant was in his distribution of cars not only giving consideration to the stock on hand at the elevator, which would require not above 22 or 23 cars, but also to the stock which the elevator controlled or was to receive at the track side, as was the case with the stock of complainant. If the complainant had received one-half of this 163 cars it would have given him about 70 more than he received. If he had received one-third it would have been 40 more than he was supplied. His claim that he could have used 100 cars in that period is much like that of the elevator company which estimated it could have used 35 per month more than was supplied them. Ten cars a month out of those assigned, in addition to what complainant received, would have had at least a semblance of fair-

ness, and this would for the three months have been less than 20 per cent of those at the disposal of the railway company.

Complainant made oath that two-thirds or three-fourths of any cars assigned to him would have moved in interstate business, and this was not disputed, and while this discrimination subjected complainant to losses as well on cars which might not have left the State, it removes a doubt to omit cars for State shipments from any calculation relating to reparation. There remains 20 cars which the defendant should have supplied complainant, and for which illegal discrimination he is entitled to compensation. On the 4,000 bushels of oats which he had to surrender and for which cars were furnished his competitors, his loss was 2 cents per bushel, or $80. On the other 16 cars, counting his profits at the lowest estimate made on his hay sales, and not reckoning any other transaction in oats, he was subjected to further losses of $144, or a total of $224.

To have earned full profits on all his transactions would have required his time, superintending operations, and the use of his capital, unless his neighbors trusted him to sell on a commission. On the other hand, even after eliminating his losses for defendant's failure to furnish system cars for State shipments, under all the circumstances, the sum of $200 probably falls far short of adequate compensation for the injuries sustained by him. But we do not feel justified in measuring an award of reparation by the probabilities of profit. We can not go beyond the amount of damages which by the testimony is shown with reasonable certainty.

An order will be issued in accordance with the above conclusion.

No. 851.

ISAAC WEIL AND ABRAHAM WEIL, DOING BUSINESS UNDER THE FIRM NAME OF WEIL BROTHERS & CO.

v.

PENNSYLVANIA RAILROAD COMPANY; PENNSYLVANIA COMPANY; AND PITTSBURGH, FORT WAYNE AND CHICAGO RAILWAY COMPANY.

Decided August 3, 1906.

Upon complaint that a rate of 62 cents per 100 pounds on "wool in the grease" from Philadelphia, Pa., to Fort Wayne, Ind., is unreasonable and also unjust in comparison with a rate on the same commodity of 43 cents eastbound from Fort Wayne to Philadelphia. *Held,* upon the evidence as presented, that the 62-cent westbound rate is not shown to be unreasonable or unjust and that the complaint should be dismissed.

Abraham Weil and *Isaac Weil* for complainants.
Allen Zollars for defendants.

Report and Opinion of the Commission.

Clements, *Commissioner:*

Weil Brothers & Co., complainants, located at Fort Wayne, Ind., are engaged in the purchase, sale, and shipment of wool. About September 19, 1905, they shipped by defendants' lines 13 sacks of unwashed wool, or "wool in the grease," weighing about 2,990 pounds, upon which they were required to pay a rate of 62 cents per hundred pounds from Philadelphia to Fort Wayne, while the rate from Fort Wayne to Philadelphia upon

the same commodity was 43 cents. This westbound rate of 62 cents complainants allege is both unreasonable and a discrimination as compared with the said eastbound rate of 43 cents between the same points; and for the difference (19 cents per hundred pounds), which they allege is an overcharge, they ask reparation.

While in the official classification which is applicable in this territory "wool in the grease" is classed the same in both directions—first class for less than carload lots and second class for carload lots. Commodity rates less than first class are therein provided for on shipments eastbound.

By the defendants' lines the rates applicable between Philadelphia and Fort Wayne since January 1, 1888, have been as follows:

	From Phila., Pa., to Fort Wayne, Ind.		From Fort Wayne, Ind., to Phila., Pa.	
	Carload.	Less than carload.	Carload.	Less than carload.
January 1, 1888	[a]53	[a]62	[a]56½	[a]65½
March 2, 1903	[b]43	[b]43	[b]43	[b]43
May 16, 1904	[a]53	[a]62	[a]56½	[a]65½
May 20, 1904, to date	[a]53	[a]62	[c]43	[c]43

[a] Official classification. [b] Exceptions to official classification.
[c] Special commodity rates.

The rates have been practically the same by all lines in this period.

The distance between Fort Wayne and Philadelphia by the defendant roads is 674 miles.

Complainants purchased wool in Indiana, Ohio, Illinois, and Wisconsin from farmers and merchants, and sell principally to New England points.

There is no stop-in-transit privilege at Fort Wayne; therefore the local rates to that point and the rates beyond make combinations higher, as a rule, than the through rates from points of purchase to destination, so that it is more profitable to ship directly through from such points of purchase. On this account, and for the further reason that the interest on money as

well as insurance rates are substantially lower in the East, the usual course of complainants' trade is to ship directly through to the storehouses in the East, as at Philadelphia, Pa., and Norton, Mass. The great movement of wool is from the West, where it is produced, to the East, where the warehouses and mills are principally located. The resulting competition to secure the traffic by various routes, including possible water lines, has secured for the traffic commodity rates in both carloads and less from Fort Wayne and other points of shipment to Philadelphia and other eastern destinations. These rates on shipments from Fort Wayne to Philadelphia are 10 cents per hundred pounds on carloads and 19 cents on less than carloads less than on westward shipments between the same points. As shown in the foregoing statement of rates, they are the same whether on carloads or less from Fort Wayne to Philadelphia. Unwashed wool is usually shipped in sacks, and these are not compressed except as may be done by tramping of the feet.

CONCLUSIONS.

Two distinct questions are here presented for determination: First. Do the two rates between Fort Wayne and Philadelphia —43 cents eastbound and 62 cents westbound on less than carloads—constitute unreasonable discrimination? Second. Is the westbound rate of 62 cents shown to be unreasonable in that it is unduly high?

Depending upon these questions is also that of reparation.

While the law requires all rates to be reasonable and just, and forbids unreasonable discriminations, it does not prescribe any measure or test of reasonableness in either case. It is manifest that the reasonableness of every rate or discrimination called into question must be determined and measured by the circumstances and conditions affecting the business. The potency of any particular fact, circumstance, or condition in a given case is to such an extent dependent upon or modified by others, so that that which is of great importance in one case may be of minor consequence in another. It follows that it can not be required in reason that rates must in all cases be the same in

both directions between the same points any more than they can be made on a strictly uniform mileage basis.

For illustration, since the cost of moving freight must be considered, the difference in grades may in reason justify a somewhat higher rate in one direction than in the opposite. The general movement of all traffic in one direction may so preponderate over that in the other as to require the constant movement of empty cars, with its attendant expense, toward the supply of bulky freights, and thus warrant the carrier in accepting the freight at less than the average rates if above the actual cost of moving the freight to secure some revenue in the right direction, though this has been for the most part urged as a defense for lower rates westward.

A great and increasing volume of freight is a factor of much influence toward the depression of rates. The great volume of freight from the vast grain fields of the West produces a competition to secure the traffic which, with the facilities provided for its handling, serves to secure for that grain a rate to the seaboard which may not be taken as a fair measure of rates on the same commodities in chance shipments in the opposite direction.

In the commodity under consideration the whole great western fields and ranges furnish the supplies, and these for the most part move in a steady stream toward the storing and manufacturing centers of the Northeast, naturally resulting in competition more intense than can be expected to result in an effort among the carriers to secure occasional shipments in the other direction.

The rates as stated on eastbound shipments are applicable to any quantity, whether a carload or a single package. This is an advantage to the scourer and spinner in the East as well as the producer in the West, and the Commission has for the most part favored the system of like rates in any quantity where the carrier has seen fit to apply the same as tending toward a simplification of classification and the elimination in a measure of the inevitable discrimination against the small dealer or shipper, which so often grows out of so-called wholesale rates.

The complainants, who are important buyers of wool to the

extent of a million or more pounds per annum, receive the advantage of these commodity rates on any quantity to the eastern markets. The shipment on which reparation is asked was a small lot of wool rejected because not quite up to the required grade of a sale consummated, and it was returned to Fort Wayne for that reason.

Until the market for the consumption of wool is developed in the West by the establishment of centers for the scouring and spinning of wool it must continue to have but one general movement, and that toward the East. It may be said that such markets may never be established if the rates are not more favorable; but they are not likely to ever depend upon the rates from the eastern seaboard, but rather, then as now, upon the rates from the local or western sources of production.

Some allusion was made in the testimony at the hearing of this case to alleged unjust discrimination against Fort Wayne and preference to Chicago and other places by reason of the existence of stoppage-in-transit privileges at such other places and not at Fort Wayne. But this is a question not presented in the pleadings in this case, and, therefore, can not be determined upon this record. The lower eastbound rate is practically the only fact presented in the record in support of the allegation of the unreasonableness of the westbound rate.

We are unable to find from the facts appearing that the rates in question are unreasonable or unduly discriminatory. It follows that the complaint must be dismissed.

No. 705.

J. K. FARRAR, H. B. FARRAR, AND F. F. FARRAR, DOING BUSINESS UNDER THE NAME OF THE FARRAR LUMBER COMPANY,

v.

SOUTHERN RAILWAY COMPANY; CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY; NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY COMPANY, AND LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

Decided August 3, 1906.

1. The rate on pine lumber from southern Georgia points to Chattanooga, Tenn., is 2 cents per 100 pounds higher than to Dalton, Ga., but on shipments to Cincinnati, Ohio, Chattanooga takes a 2-cent lower rate than Dalton. There is also a dressing-in-transit privilege at Dalton, for which 2 cents per 100 pounds additional are charged. The lumber shipped out of Chattanooga is mostly hard wood, the southern pine lumber brought to that point being practically consumed there. *Held,* upon complaint against the rate from Dalton, that under all the circumstances the lumber rate from Dalton to Cincinnati is not so discriminative nor exorbitant as to justify disturbance at this time. *Held, further,* that the reasons existing for lower lumber rates from the southern pineries do not apply to the reshipment of dressed lumber from Dalton.
2. Cleveland and Charleston, Tenn., take the Chattanooga rate on lumber to Cincinnati, but the conditions at those points are not the same as at Dalton, and no wrongful discrimination results from the existing adjustment of rates.

Chambliss & Chambliss for complainant.

Ed Baxter and *Claudian B. Northrop* for Southern Railway Company.

Ed Baxter for C., N. O. and T. P. Rwy. Co., 1 N., C. and L. Rwy. Co., and L. and N. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

It is alleged in this case that complainants purchase lumber in various States; that they are engaged in the manufacture of lumber at Dalton, Ga., and ship the same to and from Dalton to Cincinnati and other points; that the defendants, the Southern Railway Company, and the Nashville, Chattanooga and St. Louis Railway Company, have for many years charged like rates on lumber from points in southern Georgia to both Dalton and Chattanooga, the latter being from 38 to 40 miles more distant; that for a considerable period prior to May 1, 1898, defendants' rates on lumber to Cincinnati were the same—12 cents per 100 pounds—from both Dalton and Chattanooga; that on that date the Dalton rate was made 14 cents and March 18, 1900, made 15 cents per 100 pounds, the rate from Chattanooga remaining at 12 cents per 100 pounds; that these rates are the basis of rates to territory in Ohio, West Virginia, and Kentucky and any difference in rates from Dalton and Chattanooga subjects the former to wrongful prejudice and disadvantage; that the 15 cents per 100 pounds on lumber from Dalton is an unreasonable charge and compared with Chattanooga rates relatively unjust and unreasonable and subjects complainants, the traffic, and Dalton to unjust discrimination, that Charleston, Cleveland, and all points on the Southern Railway taking the Chattanooga rate to Cincinnati is a further discrimination and disadvantage to Dalton; that from Southern points as Cordele, Ga., defendants' rates on lumber are the same to Dalton and Chattanooga, while outbound from Chattanooga rates east and west are much lower than from Dalton.

The answers of the defendants deny any violation of the act; deny that rates are alike from southern points to Dalton and Chattanooga; aver that competition has fixed the rates in controversy, the proximity of the Tennessee River forcing rates at Charleston and Cleveland to the Chattanooga basis, and that Dalton has been placed on a footing with other places as far as just and proper to enable it to compete.

FACTS.

Dalton, in northern Georgia, is about 40 miles southeast of Chattanooga, on the Southern and the Nashville, Chattanooga and St. Louis railways.

The complainants are buyers of lumber at southern points and locally, manufacturing and dressing pine and hard-wood lumber, and are shippers principally to points north and east.

The pine lumber handled at Dalton is mostly from the south, there being but a small proportion of native pine remaining in the neighborhood, and that for the most part of second growth and very inferior quality.

The hard wood, poplar, oak, etc., is from the country adjacent to Dalton, but is not so important in amount. A letter from a customer of complainants submitted in evidence alleges a large proportion of the trade from Dalton is in hard woods, but classifies yellow pine as hardwood, which, if appropriate, does not agree with the usual definition in the trade. The complainants estimate 20 or 25 per cent of their trade as in hard woods, and an investigation made at the instance of one of the defendants contained an estimate of less than 5 per cent hard wood shipped from Dalton.

The rates from Dalton, Cleveland, Charleston, and Chattanooga to Cincinnati are shown in the following table:

	July 17, 1893.	Feb. 4, 1895.	May 1, 1898.	March 18, 1900.	April 21, 1904.	Jan. 2, 1905, to date.
Chattanooga, Tenn.	15	13	13	13	13	13
Cleveland, Tenn.	15	12	13	13	13	13
Charleston, "	15	13	13	13	13	13
Dalton, Ga.	15	13	14	15	15	15

The rates from southern Georgia points to Chattanooga and Dalton were the same on pine lumber from 1896 to 1903, but after June 22, 1903, the rates to Chattanooga were advanced 2 cents above Dalton. By the tariffs of the Southern Railway, Dalton does not appear to have been named before 1892.

There is a milling or dressing-in-transit privilege at Dalton permitting the shipping from Dalton of the dressed lumber at the through rate from point of origin plus 2 cents for the privilege of dressing to pay for the delay and cost of extra handling. This addition of 2 cents per 100 pounds to the through rate from point of origin makes the milling-in-transit rate to Cincinnati through Dalton the same as the regular rates in and out of Dalton, and is apparently of little practical advantage to complainants and does not appear to be extensively used by them. The rate is computed on actual weights before and after dressing. The weight is reduced in the dressing and drying.

If shipments were to be made to points in the Northwest through Cairo, this milling-in-transit privilege would afford more substantial margins and would probably be the rates preferred if complainants were seeking markets in that direction. But the advantages shown to exist in favor of Dalton by shipping through Cairo are not under present conditions of any practical benefit to complainants since the markets they have developed and sought are in the East.

The rate from Chattanooga to the various Ohio River crossings between Cincinnati and Cairo, both included, is 13 cents per 100 pounds, whether proper or destined beyond. From Dalton the rate is 15 cents, except to Cairo, destined beyond, when the rate is made 11 cents, to place Dalton on a parity with the mills in southwestern territory, the rates from which are all based upon the Cairo combination, and was intended, defendants allege, to put the lumber from all mills as nearly as possible on a competitive basis for the territory beyond Cairo. This gives a combination rate through to points north of Cairo and west of a line approximately from Louisville through Indianapolis to Chicago less than the Cincinnati combination.

Cleveland and Charleston rates are the same on lumber to Cincinnati as from Chattanooga. The reasons assigned by carriers for this is their proximity to the Tennessee River. The shipments at these points being of local hard woods and not southern pine, the conditions are not the same as at Dalton.

The lumber trade from Chattanooga is mostly of local hard woods floated down the Tennessee River—principally oaks and

poplar, with some ash, elm, basswood, cedar, etc.—and the same is true of Knoxville and also of Nashville, on the Cumberland River. Yellow pine from the south is practically sent to Chattanooga for local consumption only; there is little or no traffic in manufactured pine out of that city.

Rome and Atlanta were classed at the same rate, 18 cents per 100 pounds on lumber to Cincinnati in 1893, but the rate from the former was reduced to 15 cents May 1, 1898, and to 14 cents May 20, 1899. September 8, 1899, the rate from Atlanta was made 19 cents; on January 19, 1903, the rate from Rome was again raised to 15 cents, the present rate, and June 20, 1903, the Atlanta rate was increased to 21 cents per 100 pounds.

March 14, 1905, the Southern Railway tariffs quoted the same rates from Atlanta and Rome to Cincinnati.

The changes in rates from Rome and Atlanta are shown by the following table:

	Jan. 2, 1893.	May 1, 1898.	May 20. 1899.	Sept. 8, 1899.	Jan. 19, 1903.	June 22, 1903, to date.
Rome, Ga......	18	15	14	14	15	15
Atlanta, Ga....	18	18	18	19	19	21

The following map is inserted for reference:

CONCLUSIONS.

The reasons which exist for the maintenance of the lower lumber rates from the southern pineries do not apply to the reshipment of dressed lumber from Dalton.

In the regions of lumber supply the amount of this class of freight offered for transportation is very large and the shipments continuous and regular. The tonage is of vast importance to the carriers, affording them a principal source of revenue. The immense volume alone of traffic is an argument for not only

reasonable but comparatively low rates, and these in turn are necessary to the exploitation of the lumber industry in new fields that partakes of the character of pioneer development, whereas at Dalton the rough lumber is unloaded and reloaded. The dressing of the lumber results in a comparatively important waste of raw material, which is by that amount loss of tonnage to the carrier, a duplication of terminal expenses, a loss of time and increase of expenses by reason of delays in the through shipment to destination. The character of much of the lumber is changed from rough to planed lumber, 90 per cent of which is shipped in box cars for protection to both shipper and carrier.

This difference in circumstances and conditions does not relieve the carrier from the duty of performing the service at reasonable rates, but when the various kinds of lumber, hard and soft, rough and planed, are classed together, as the carriers have seen fit to do in this traffic, and the character of the traffic in a particular region taken as a whole is raised as to value and expense, it is not unreasonable that the general rates applicable to the changed conditions should be something higher.

The rates on lumber from Dalton proper are again on a different class of lumber from that in southern pine forests.

The few good pines left in the vicinity, and which with some of the more valuable hard woods that may pay for hauling a distance of 20 miles, furnish no such tonnage as justify the enforcement of the lower rates which ought to prevail from the great forests. The hard woods are not only less in amount but often of greater value, and the average of rates to the Ohio River are under all these circumstances neither so discriminative nor so exorbitant as to justify, in our opinion, any order disturbing at this time the rate from Dalton to Cincinnati, the particular rate complained of in the petition.

The counsel for complainants in his brief, referring to the changes in rates which had been made by carriers after the making of the complaint, said: "First. It is apparent that the issues presented in the petition have to a considerable extent been eliminated except as they affect the question of reparation. When the petition was prepared and signed the conditions set

out therein existed, but between that time and its actual filing certain changes in rates were made by the railroads."

But little pine lumber having been shipped to Cincinnati from southern points is reshipped to or beyond Cincinnati. Substantially all that reaches Chattanooga from the South is consumed there. In respect, therefore, of the principal shipments from Dalton, pine lumber, it appears that Chattanooga is not a competitor with Dalton. It is by no means clear that the discriminations of the past complained of were so undue or unreasonable, in view of the whole situation, as to afford any basis for complainants' claim of reparation. If it were, this record supplies no such data or proofs as would be necessary to make such definite award of reparation as the law contemplates.

The complaint must be dismissed.

No. 712.

J. K. FARRAR, H. B. FARRAR, AND F. F. FARRAR, DOING BUSINESS UNDER THE FIRM NAME OF THE FARRAR LUMBER COMPANY.

v.

SOUTHERN RAILWAY COMPANY AND NORFOLK AND WESTERN RAILWAY COMPANY.

Decided August 3, 1906.

1. Upon complaint that lumber rates from Dalton, Ga., to points in Virginia on the Norfolk and Western lines between Bristol, Tenn., and Roanoke, Va., and between Bluefield, W. Va., and Kenova, W. Va., which were advanced in 1901 and 1903, are unreasonable and unduly discriminating, and also in violation of the long and short haul clause because the rates to such intermediate points are higher than for the longer distances to Roanoke or Lynchburg, *Held:* That in view of judicial interpretations of the act, the facts in this case furnish no basis for a conclusion that the rates in question violate the fourth section of the law; but the rates to such intermediate points, of which complaint is made, are excessive, unreasonable, and unjust, and should not exceed those in force before the advances were made effective.
2. The rate per ton per mile is not always the measure of a reasonable rate, as that measure rigidly applied would make distance alone the gauge for transportation charges; but it affords a valuable basis of comparison for relative rate burdens.
3. Reparation denied because of insufficient proofs.

Chambliss & Chambliss for complainant.

Ed Baxter and *Claudian B. Northrop* for Southern Railway Company.

Ed Baxter for Norfolk and Western Railway Company.

Report and Opinion of the Commission.

Clements, *Commissioner:*

The complaint alleges that the Farrar Lumber Company, manufacturing lumber and building material at Dalton, Ga., ship the same over defendants' lines to other States, shipping through Bristol, Tenn., by the Southern Railway to points in Virginia betweeen Bristol and Roanoke, and to points in West Virginia betweeen Bluefield and Kenova, on the line of the Norfolk and Western Railway, and that to Roanoke, Lynchburg, or Kenova lumber carried by defendants would pass through said intermediate points.

The rates challenged are those on carload shipments from Dalton, Ga., to Wytheville, Pulaski, East Radford, and Christiansburg, in the State of Virginia, betweeen Bristol and Lynchburg, and to Bluefield, Bluestone Junction, Vivian, Thacker, and Williamson, in West Virginia, between Bristol and Kenova.

It is alleged that the rates to Roanoke, Lynchburg, and Kenova are joint through rates, whereas those to the intermediate points named are the sums of the locals to and from Bristol, and that the latter are unreasonable, unduly discriminatory, and violate section 4 of the act. Reparation is also asked.

The defendants both deny unreasonableness of the rates and undue discrimination or violation of the fourth section, alleging controlling rail and market competition at Lynchburg and Roanoke and rail and water competition at Kenova, and the lack of such competition at the intermediate points named and consequent dissimilarity of circumstances and conditions. They also deny that lumber destined to Lynchburg or Kenova need pass through Bristol, but that to Kenova the rate is based on Lexington, Ky., and that defendant, the Southern Railway, can and does reach Lynchburg on its own rails without passing through Bristol or Roanoke.

Facts.

These are commodity rates under southern classification pub

lished by the defendants from Dalton to Bristol, Tenn., and from Bristol to the respective intermediate points.

In the following statement will be found the rates in question, with changes therein from October 8, 1891, to the present time. It will be seen that no rates are published by the defendants from Dalton to the points named on walnut, cherry, or cedar lumber. This fact was explained by a statement that practically no lumber of this character moved between the points in question.

It will also be seen that the rates on oak and hemlock are different from those on pine and other lumbers covered by the tariff between Bristol and Lynchburg and between East Radford and Kenova on the Norfolk and Western Railway.

Statement showing rates on lumber, carloads, from Dalton, Ga., to various points named.

[Rates in cents per 100 pounds.]

LUMBER, EXCEPT WALNUT, CHERRY, AND CEDAR.

From Dalton, Ga., to—	July 13, 1903[a]
Wytheville, Va	18½
Pulaski, Va	19½
East Radford, Va	20
Christiansburg, Va	20½
Bluefield, W. Va	23
Bluestone Junct., Va	23½
Vivian, W. Va	24½
Thacker, W. Va	26
Williamson, W. Va	26

OAK AND HEMLOCK.

Wytheville, Va	18½
Pulaski, Va	19½
East Radford, Va	20
Christiansburg, Va	20½
Bluefield, W. Va	23
Bluestone Junction, Va	23½
Vivian, W. Va	24½
Thacker, W. Va	24½
Williamson, W. Va	24½

[a] Combination of locals using 11 cents, Dalton, Ga., to Bristol, Tenn.-Va.

Lumber shipped from Dalton to the points the rates to which are the subject of complaint is carried by the Southern Railway 241 miles to Bristol, Tenn., and thence by the Norfolk and Western Railway to destination.

The rates as published and enforced are made up of the combinations of the rates to Bristol, 11 cents per 100 pounds, with the Norfolk and Western locals added, the results being in every case higher than had prevailed for the same haul for many years.

In 1888 this Commission, in the case of *Farrar* v. *East Tennessee, Virginia and Georgia Ry. Co. et al.* (1 I. C. C. Rep. 480), ordered that the rate from Dalton on lumber to Roanoke should not exceed 17 cents and to Lynchburg should not exceed 18 cents per 100 pounds. The carriers subsequently fixed the Lynchburg rate at 17 cents on the ground that Roanoke, though above 50 miles less distant, to be protected from too active competition from Lynchburg, must have the same rates. These rates have been in existence for the seventeen or eighteen years since on oak and hemlock, but were raised 1 cent on other lumber, except walnut, cherry, and cedar, and it appears from reports of shipments by complainants over considerable periods in later years that no shipments were made by them to these points, at least of any consequence, even at a rate so much lower than prevailed to intermediate shorter distance points.

The basis on which part of the complaint is lodged is this lower rate to Roanoke with its apparent violation of the fourth section of the act, and on the theory that this complication would thus be avoided a rate of 22 cents per 100 pounds was fixed upon all lumber to Roanoke after the filing of the complaint in this case, which has since been reduced to 21 cents.

No rate is published from Dalton via Bristol to Kenova, and it was not shown that any shipments had been made over the defendants' lines to that point.

Kenova is 615 miles from Dalton via Bristol, but is 427 by a route through Lexington via the Chesapeake and Ohio Railroad. By this route the rate is 15 cents to Lexington, and from Lexington to Kenova the rate is 5 cents, or a combination rate of 20 cents; and, as stated, no rate was published, no ship-

ments accepted, and no lumber shipped to Kenova by the Norfolk and Western over this longer route.

At Lynchburg, with several competing lines, the rates from nearby points are considerably lower than from Dalton. By way of the Atlantic Coast Line from North Carolina points lumber may be delivered at from 12 to 15 cents, and over the Aberdeen and Asheboro Railroad from 10½ to 16 cents.

Kenova and Lynchburg are both competitive points, the former being served by the Ohio River, the Norfolk and Western and the Chesapeake and Ohio Railways, and the latter being served by the Southern, the Norfolk and Western, and the Chesapeake and Ohio.

The intermediate points on the Norfolk and Western, the rates to which are in issue, are all on the Norfolk and Western alone.

Roanoke, with a population of 21,495 in 1900, had an estimated population in 1904 of 26,000.

The points between Bristol and Roanoke, the rates to which are the subject of complaint—Christiansburg, East Radford, Pulaski, and Wytheville—have from 2,800 to above 4,000 inhabitants each, while the points named between East Radford and Kenova average about one-third as many.

These are in the mining district, and shipments to each point are not of sufficient magnitude to influence rates, and afford no inducement either in volume or regularity for the carrier to make any special efforts to secure or favor the traffic.

The class of lumber which forms the bulk of this traffic to these points is not the most expensive, and can therefore the less easily bear the burden of high rates. The rapid growth of these centers of activity in recent years has much increased the demand for all sorts of building material, and the natural tendency of an increased demand would ordinarily be toward a reduction instead of an increase in the rates, which had been in existence for years until 1901; yet they were in that year and 1903 raised, in some instances, 20 per cent.

The method by which this was accomplished is as follows:

The Southern Railway advanced the rates, publishing a so-called joint tariff without consultation with its connection, the

Norfolk and Western Railway, and in which the latter refused to concur in the following note of advice to this Commission:

"Please make note of the fact that the Norfolk and Western Railway Company does not concur in Southern Railway Company's I. C. C. No. 7548 (Lumber issue No. 3885), showing rates as above, effective July 1 instant (1903)."

Of the 17-cent rate to Lynchburg the Southern Railway up to Bristol received 9.8 cents on pine and 9.2 cents on other lumber for its haul of 241 miles, and the Norfolk and Western for its haul of 204 miles received 8.2 cents on pine and 7.8 cents on other lumber.

As late as March 11, 1903, the Commission received a letter from Mr. T. S. Davant, freight traffic manager of the Norfolk and Western Railway Company, as follows: "I will request the Southern Railway to revise the rates which it published from Dalton, Ga., to our main line stations east of Bristol on basis of Bristol combination, observing the rates to Lynchburg as maxima."

The Southern Railway declined to join the Norfolk and Western when the request was made. Then the Southern, without the knowledge of the Norfolk and Western Railway officials—a statement in which representatives of both lines agreed—published through rates based on the sum of the two locals to and from Bristol, in which the Norfolk and Western afterwards concurred, as it was claimed that refusal would not have altered the rate, which would still be the sum of the locals, and its only effect would be to embarrass the Southern Railway by preventing that initial line giving a through bill of lading.

The representative of the Southern Railway, testifying, took full responsibility for the action and admitted the increases were made without consulting the Norfolk and Western officials, saying, in his testimony, "So far as I know they did not know anything about it."

There is every indication that the Norfolk and Western Railway made an effort to secure protection of the lower joint rates which had been for so many years in effect and to protect the intermediate stations with rates not above the Lynchburg rates as maxima.

We find that the rates in question on carload shipments from Dalton, Ga., to the said intermediate points on the Norfolk and Western Railway in Virginia and West Virginia, hereinbefore specified, are unreasonable and unjust, in that they are excessively high.

The following map is inserted for reference:

CONCLUSIONS.

The facts found do not, in view of the judicial interpretation of the act, furnish basis for a conclusion that the rates in question violate the so-called long and short haul clause.

In view of the long continuance of these rates, of the quality of the lumber which seeks this market, of the concession by the Norfolk and Western, one of the connecting roads, that the rates were reasonable, as shown in its effort to continue them,

it is difficult to find any adequate reason for the advance in question.

The rate per ton per mile is not higher than in some other localities. That it should be lower than those with which many comparisons were made for like distances from points west of the Mississippi River is not remarkable, since the traffic is essentially under different conditions and the general trend of rates is still higher for that territory than for this, where the traffic is more dense.

The rates even as formerly existing to these points were higher than the Commission fixed for rates directly from the southern pineries to Ohio River crossings in a more recent decision for even greater distances; but as already pointed out the character and volume of the lumber involved in these respective localities are hardy comparable, and the forest rates would not afford a fair basis for fixing the rates on dressed lumber in comparatively small lots to these mountain stations.

Lumber is not carried at class rates, but in all classifications is given a commodity rate.

The rate from Dalton to Bristol, 241 miles, of 11 cents by the Southern Railway, yields 9.1 mills per ton per mile, while the rate from Bristol to Roanoke, 151 miles, of 11 cents is 14.5 mills per ton per mile. And this for a proportion of a through carriage for shipments reaching the line from another carrier and without delays or initial terminal expense forwarded to destination, and is beyond question unreasonable. The assumption that because no shipments have been made under a lower rate long in existence makes any rate a nominal affair, and that the rate might be made 40 cents per 100 pounds without injury to any shipper, since the rate is never applied may with equal force be reversed. If no shipments are made under a 17-cent rate to Roanoke from Dalton, its continuance can harm no carrier, since no shipments are carried under that rate, this being strong evidence that the rate is not unreasonably low, since it is yet high enough to prevent competition at that point which an unreasonably low rate would have a tendency to invite.

There is a considerable movement of lumber through Lynchburg to Roanoke from North Carolina points, and it may be

that a point like Roanoke, with nearby markets of supplies and lower rates, is well enough served, or at any rate may be beyond a zone where the more distant lumber could compete at any reasonable figure. There is no disposition on the part of the Commission to create that sort of forced competition which grows out of unduly lowered rates simply to reach a distant market. Our duty goes no further than the establishment or continuance of rates that under all circumstances and conditions may be demonstrated to be fair to the carrier and the shipper.

As far back as 1888 the Commission held that 17 cents per 100 pounds on lumber was not unreasonable from Dalton to Roanoke. The carriers, in compliance, not only established the 17-cent rate between those two points, but also, for reasons of their own, made the same rate to Lynchburg.

One of the defendants in this case presented tables of shipments from Dalton for the fiscal year, 1903, prepared by its auditor—shipments for the month of April, 1903, prepared by the complainants, and shipments by the complainants for the calendar year of 1904, prepared by the local agent of defendant at Dalton—and in all these returns there was no record of any car of lumber to Lynchburg or Kenova. The inference naturally drawn that Lynchburg was not a market for this commodity from Dalton is not a violent one, yet the rate for years was 17 cents per 100 pounds, or 1 cent lower than that which the Commission held might reasonably be charged.

In that period the general tendency of rates has been downward, but here there has been no further reduction nor any striking development of a market which might be expected from an undue reduction.

Nothing has been shown to justify this rate of 14.5 mills per ton per mile to Roanoke, and any rate above that established by the Commission in 1888 and maintained since until after the filing of this complaint must be considered unreasonable, and the increase of this rate to 22 cents per 100 pounds since the filing of this complaint, for the sole and avowed purpose of thus justifying the unreasonable rates to intermediate points under the fourth section of the act to regulate commerce, must be held to be without justification.

The rate per ton per mile is not always the measure of a reasonable rate and, rigidly applied, would make distance alone the gauge for transportation charges, but it is always valuable as affording a basis of comparison for relative rate burdens.

The rate per ton per mile for all freight upon the Norfolk and Western Railway for 1904 was 0.474, or less than 5 mills per ton per mile. This, of course, includes through freights and is reduced by the bulky, low grade carriage. It is by no means to be considered that single cars of limited and uncertain volume are to be reduced to this standard, but it is to be remembered that this lumber does not originate upon this line, that there is no initial charge upon its collection; it is a part of a through haul from the Southern Railway—is carried through Bristol without appreciable delay; and yet with these inducements and reasons for approaching the minimum or average freight charge this road exacts rates to the local points on its line ranging to above 2 cents per ton per mile.

The Norfolk and Western officials expressed a willingness to protect their old rates, using the Lynchburg rates as maxima to intermediate points, but because these connecting lines could come to no agreement as to joint rates is no just cause for the extortionate rates which have resulted by the application of the locals to through carload freights. No sufficient data or proofs were submitted as a basis from which the Commission could fix a definite award of reparation.

An order will be entered that defendants cease and desist from charging and collecting the unreasonable rates now in force upon lumber from Dalton, Ga., to the said designated intermediate points named upon the Norfolk and Western Railway.

No. 770.

A. H. DAVENPORT, J. A. DAVENPORT, G. A. DAVENPORT AND J. T. DAVENPORT, DOING BUSINESS UNDER THE FIRM NAME OF DAVENPORT BROTHERS & COMPANY.

v.

SOUTHERN RAILWAY COMPANY AND SEABOARD AIR LINE RAILWAY.

Decided August 21, 1906.

Upon complaint that defendants violate the act to regulate commerce by charging higher rates on canned goods, grain, flour, hay, and packing-house products from Cincinnati, Ohio, and Memphis, Tenn., to Helena and McRae, Ga., than to Cordele and Fitzgerald, Ga., towns in the section of country surrounding Helena and McRae, after giving due consideration to the circumstances and conditions, including situation of localities, railway competition, competition of markets, and the basing-point system of rate making as practiced in the South, *Held:* That, upon the record made in this case, the situation of Helena and McRae is not so similar to that of Cordele as to require the application of Cordele rates to the first-named places, but that the rates in question from Cincinnati and Memphis to Helena and McRae are unreasonable and unjust and should not exceed those now in effect to Fitzgerald from such points of origin.

G. T. Davenport for complainants.

Ed Baxter and *C. B. Northrop* for Southern Railway Company.

Ed Baxter for Seaboard Air Line Railway.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The complaint alleges that the rates from Cincinnati, Ohio, and Memphis, Tenn., respectively, to Helena and McRae, Ga., respectively, on canned goods, grain, flour, hay, and packing-house products are unjust and unreasonable generally and relatively as compared with rates on the same commodities from the same points of origin to Cordele and Fitzgerald, Ga., and subject Helena and McRae to undue prejudice and disadvantage. Violations of sections 1 and 3 of the act are alleged.

Defendants admit that the rate adjustment as complained of exists, but deny that it results in unreasonable charges on the articles mentioned to Helena and McRae, or that it unduly prefers Cordele and Fitzgerald; and they allege that there are no competitive conditions at Helena and McRae which justify lower rates to those points.

Complainants are merchants and partners engaged at Helena and McRae, Ga., in a wholesale commission and brokerage business, dealing especially in the commodities mentioned.

Defendants are common carriers of interstate traffic. The Southern Railway reaches from Memphis, Tenn., and with a closely affiliated line (the Cincinnati, New Orleans and Texas Pacific Railway) from Cincinnati, Ohio, to points in Georgia, including Helena and McRae, but does not reach Fitzgerald or Cordele. The Seaboard Air Line Railway does not extend to Memphis or Cincinnati, but Helena, Cordele, and Fitzgerald are on its line. The Seaboard does not reach McRae.

Hereinafter the Southern Railway will be called the Southern, and the Seaboard Air Line Railway the Seaboard.

The transportation facilities at the Georgia points mentioned in the complaint are as follows: At Cordele, the Atlantic and Birmingham, and Albany and Northern, the Seaboard, and the Georgia Southern and Florida; at Fitzgerald, the Southern, the Seaboard, the Atlantic and Birmingham, and the Fitzgerald, Ocmulgee and Gulf Railroad running from Fitzgerald to the Ocmulgee River, 15 miles; but this last-named line produces no substantial competition at Helena.

Helena is situated at the junction of the Seaboard and Southern roads. It is on the main line of the Seaboard leading from Savannah, Ga., to Montgomery, Ala., and is 117 miles southwest of Savannah. It is on the Macon-Brunswick line of the Southern, 76 miles southeast of Macon and 114 miles northeast of Brunswick. McRae is on the Southern only and lies just outside of Helena in the direction of Brunswick, the railway depots of Helena and McRae being a little over 1 mile apart. These two towns may properly and, for the purposes of this case, will be treated as one place.

Cordele is 54 miles west of Helena, with which it is connected by the Seaboard. Fitzgerald is 40 miles southwest of Helena, and is on a branch of the Seaboard leading south from Abbeville, Ga., a point lying between Helena and Cordele.

The short-line distances from Cincinnati and Memphis to Helena, McRae, Cordele, and Fitzgerald are:

To—	From—	
	Cincinnati.	Memphis.
	Miles	*Miles*
Helena	640	557
McRae	641	558
Cordele	629	503
Fitzgerald	666	540

Traffic transported from Cincinnati or Memphis to any of the Georgia points in question would naturally pass through either Atlanta, Birmingham, or Montgomery. Traffic from Memphis via Birmingham would ordinarily pass through Cordele in going to Helena and McRae, and the same would be true of the traffic from Memphis via Montgomery over the Seaboard; but the Central of Georgia might deliver the traffic from Montgomery at Tifton, in which case it would go via Fitzgerald in getting to Helena or McRae. Traffic from Cincinnati would naturally pass through Atlanta and Macon in going to the Georgia points in question, but it would not go through Cordele or Fitzgerald in going to Helena or McRae. That traffic to McRae would pass through Helena, and that to Cordele or Fitz-

gerald would not pass through Helena or McRae, but through Cordele.

Helena had several stores, an oil mill, bottling works, three lumber mills, and factories for ice, hay presses, stone, and vehicle parts. In 1900 its population, according to the United States census, was 604, and that of McRae was 1,020, but it seems from the testimony of the freight traffic manager of the Southern that these two places "have increased considerably of late years." Mayor King, of Helena, estimated the population of the two places at 2,500 or 3,000. The population of Cordele in 1900 was 3,473 and that of Fitzgerald was 1,817.

The rates, in cents per 100 pounds, in effect at the time of the filing of the complaint in this case were:

FROM CINCINNATI, OHIO.

To—	Canned Goods.		Grain.	Flour.		Hay.	P. H. prod.
	C. L.	C. L.	C. L.			C. L.	C. L.
Cordele, Ga	[a] 50	50	28	[b] 28	[c] 56	28	41
Fitzgerald, Ga	[a] 53	53	30	[b] 30	[c] 60	30	44
Helena, Ga	[a] 55	75	35	[b] 36	[c] 70	35	55
McRae, Ga	[a] 57	76	35	[b] 36	[c] 70	35	55

FROM MEMPHIS, TENN.

Cordele, Ga	[a] 46	46	24	[b] 24	[c] 48	24	37
Fitzgerald, Ga	[a] 49	49	26	[b] 26	[c] 52	26	40
Helena, Ga	[a] 51	71	31	[b] 32	[c] 62	31	51
McRae, Ga	[a] 53	72	31	[b] 32	[c] 62	31	51

[a] Fruits and vegetables [b] In sacks, per 100 pounds [c] In barrels, per barrel.

It appears from the testimony that the foregoing rates to Helena and McRae were in effect for a good many years prior to the month of February, 1905, but that in that month certain changes were made in all the rates mentioned. Subsequently the rates on canned goods other than fruits and vegetables to

Helena were reduced 6 cents. It also appears that these rates have not since been changed. They are as follows:

FROM CINCINNATI, OHIO.

To—	Canned Goods.		Grain.	Flour.		Hay.	P. H. prod.
	C. L.	C. L.	C. L.			C. L.	C. L.
Cordele, Ga	a 53	b 53	27	c 27	d 54	27	39
Fitzgerald, Ga	a 56	b 56	29	c 29	d 58	29	42
Helena, Ga	a 58	b 70	33	c 34	d 66	33½	58
McRae, Ga	a 68	b 68	33½	c 34	d 68	33½	53
FROM MEMPHIS, TENN.							
Cordele, Ga	a 49	b 49	23	c 23	d 46	23	35
Fitzgerald, Ga	a 52	b 52	25	c 25	d 50	25	38
Helena, Ga	a 54	b 66	29	c 30	d 58	29½	49
McRae, Ga	a 64	b 64	29	c 30	d 58	29½	49

aFruits and vegetables. cIn sacks, per 100 pounds.
bFish, cove oysters, jellies, preserves, etc. dIn barrels, per barrel.

The foregoing rates are via the Southern as the initial carrier at Cincinnati and Memphis. The Louisville and Nashville, the other southbound initial carrier at those points, also has a tariff on these articles to the Georgia points in question, which is different only on a few articles from that of the Southern. The following table shows in detail the changes made in the rates of the defendant lines:

FROM CINCINNATI, OHIO.
(+) increase; (—) decrease.

To—	Canned Goods.		Grain.	Flour.		Hay.	P. H. prod
Cordele, Ga	a+ 3	b+3	—1	c—1	d—2	—1	—2
Fitzgerald, Ga	a+ 3	b+3	—1	c—1	d—2	—1	—2
Helena, Ga	a+ 3	b+5	—2	c—2	d—4	—1½	—2
McRae, Ga	a+11	b—8	—1½	c—2	d—2	—1½	—2
FROM MEMPHIS, TENN.							
Cordele, Ga	a+ 3	b+3	—1	c—1	d—2	—1	—2
Fitzgerald, Ga	a+ 3	b+3	—1	c—1	d—2	—1	—2
Helena, Ga	a+ 3	b—5	—2	c—2	d—4	—1½	—2
McRae, Ga	a+11	b—8	—2	c—2	d—4	—1½	—2

aFruits and vegetables. bFish, cove oysters, etc. cIn sacks. dIn barrels.

It should be noted that the changes are generally nearly uniform on the articles to all the points, except the rate on canned fruit and vegetables to McRae, which was increased much more than others. The rates from Memphis are 4 cents per 100 pounds lower, as a rule, than those from Cincinnati.

The general basis for constructing rates from the west to Helena and McRae is a combination of the rates from the west to either Macon, Hawkinsville or Brunswick with the local from that one of those basing points which is the lowest. To Helena, the lowest combination is on Macon on all classes, except B, which is based on Hawkinsville, and E and H, which are based on Brunswick. To McRae the lowest combination in all cases is on Macon, with the exception of classes 2, E and H, which are based on Brunswick. Several nearby places east of Helena take the Helena rates from the west. Merchants at Cordele can ship goods in from the west and reship out to points near Helena, and, in some cases, even at Helena, for less rates than those direct to Helena. Hence, it is that merchants at Helena are unable to do much of a jobbing business in its surrounding territory.

The rates to Cordele from the west were, prior to about the year 1896, made up on a combination similar to the one now in vogue to Helena and McRae, but since that time Cordele takes through rates less than such combination. Defendants allege that the present rates to Cordele were not voluntarily made by them, but were in obedience to the order of this Commission. Fitzgerald was built up by and came into public notice because of the settlement of a colony consisting largely of members of the Grand Army of the Republic, with their friends and connections. It was not then, nor is it now, on any one of the main lines of the Seaboard, the Southern or the Atlantic Coast Line, but in the struggle to participate in this "old soldier" traffic lower rates were obtained by Fitzgerald.

A witness for defendants compared the rates from the west to Andersonville, Cobb, and Sibley, Ga., and Banks, Ala., points about the same distance from Cincinnati as Helena, with such rates to Helena, showing nothing unfavorable to the latter; but none of these are junction points, whereas Helena is at a

junction of two important lines, those of the defendants in this case.

Defendants' witnesses testified that these carriers have never competed in the reduction of rates for the Helena traffic as for that of Fitzgerald and Cordele, because the commercial conditions at Helena are not similar to those at Fitzgerald and Cordele. They aver that if they reduce the rates to Helena they will have to reduce the rates to other small and intermediate points in that neighborhood, and if such a policy should be generally pursued it would result in equally lowered rates, which would not benefit any particular point but would bring disaster to the revenues of the railroads. They claim that at present Helena has all that its situation merits in the way of rates, as it gets the benefit of the competitive rates to the basing point plus the local rate prescribed by the Georgia Railroad Commission.

On the other hand, complainants contend that the only reason why the defendants have never competed by reducing rates for the traffic to Helena is because they have not seen proper to compete in this way at that point. They assert that Helena is in a similar condition commercially and with reference to transportation now that Cordele was in when that place obtained reduction in rates.

We do not find that the circumstances and conditions are in substance similar at Helena and McRae to those at Cordele or at local stations referred to in comparison, but we do find that the rates in question to the first-named places are unreasonable and unjust.

CONCLUSIONS.

In the testimony and argument presented by the defendants a history of rate reduction to various basing points in Georgia is given, and these are of two classes, those resulting from the independent action of the carriers and those made by the carriers in compliance with orders of this Commission affecting directly Cordele, Dawson, and Tifton. With these may also be included rates put in at Valdosta under the stress of a complaint pending before the Commission, and which action caused the withdrawal

of that complaint. The defendants insist that the reduced rates resulting from the action of the Commission are to be regarded as "arbitrary conditions," as distinguished from natural or commercial conditions, or such competitive circumstances as may arise from time to time from the action of one or more carriers. We see no force in this distinction. The rates to Cordele, made pursuant to an order of the Commission, are in our judgment to be regarded in the same light, so far as they bear upon the case now before us, as those to Fitzgerald made by the carriers without an order of the Commission.

The basing-point system, as practiced by carriers in the South, has been frequently discussed by the Commission and further consideration of its merits or faults is not now required. The system involves adding to the rate in effect to a basing point the local rate from that basing point, to arrive at the total or combination rate to all points not included within the basing-point list. To this there are some exceptions, like Fitzgerald, which place takes rates made up of that to Cordele plus an arbitrary or specific less than the local from Cordele. Helena and McRae come within the class of straight combinations first mentioned. It is to be observed, however, that the lowest combination is, as a rule, applied, and it results in some instances that the through rate to the coast at Brunswick is added to the local back to Helena and McRae. Under such adjustment of rates from Memphis and Cincinnati upon the articles involved herein Cordele has an extreme advantage over Helena and McRae in all territory lying westerly of Helena and McRae and in a considerable section easterly of those points.

We are of opinion that the defendants, with their intersecting lines at Helena-McRae, and operating two of the three or four systems in this southeastern territory, could well afford to extend the Cordele rates to the points in question, and that it is in accord with their own good business policy not to restrict the building up of jobbing and manufacturing centers.

We are not convinced upon the record here made that the situation of Helena and McRae is so similar to that of Cordele as to require the application of Cordele rates to the first-named places. But we believe the rates in question from Cincinnati

and Memphis by the defendant lines to be unreasonable and unjust. We do not think they should exceed those now in effect to Fitzgerald from the same points of origin.

An order will be made accordingly.

Commissioner Prouty did not participate in the hearing or decision of this case.

No. 841.

THE A. J. PHILLIPS COMPANY
v.
GRAND TRUNK WESTERN RAILWAY COMPANY; DETROIT, GRAND HAVEN AND MILWAUKEE RAILWAY COMPANY, AND CENTRAL VERMONT RAILWAY COMPANY.

Decided August 21, 1906.

1. Upon complaint that the rates on wire-screen doors and windows eastbound from Fenton, Mich., a place near Detroit, to Winooski, Vt., and certain other eastern points, are higher than the rates on such articles westbound from Winooski to Detroit, and certain other western points, and result in unreasonable rates and unjust discrimination against such eastbound shipments. *Held:* That somewhat lower rates on westbound than on eastbound traffic seems, from the difference in conditions, to be justified; but no satisfactory reason appears why there should be a greater disparity between the rates on the traffic in question eastbound and westbound than that which prevails on articles of substantially the same character in the classes.
2. In unjust discrimination cases the difference in cost of manufacture to the competing shippers offers no ground of itself to the carriers nor to the Commission for adjustment of rates.
3. Case retained with the expectation that the defendants will make a substantial readjustment of the rates in accordance with the views expressed in the opinion.

W. B. Phillips for complainant.
L. C. Stanley for defendants.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

The complainant company is a corporation engaged at Fen-

ton, Mich., in the manufacture, sale, and shipment of screen doors, windows, and other wire specialties. It is alleged that from Winooski, Vt., 3 miles east of Burlington, the defendants charge and exact on wire screen doors and windows the following rates to the western points named:

To Detroit, Mich., 20 cents (carload, 18,000 pounds).
To Chicago, Ill., 25 cents (carload, 16,000 pounds).
To Milwaukee, Wis., 25 cents (carload, 16,000 pounds).
To East St. Louis, Ill., 31 cents (carload, 16,000).

That from Fenton, 51 miles west of Detroit, Mich., they charge to eastern points named below the following rates:

To Winooski, Vt., 36 cents (carload, 14,000 pounds).
To Boston, Mass., 36 cents (carload, 14,000 pounds).
To New York, N. Y., 32 cents (carload, 14,000 pounds).
To Philadelphia, Pa., 30 cents (carload, 14,000 pounds).

That the difference of 16 cents per hundred pounds between the eastbound and westbound rates from Winooski to Fenton and from Fenton to Winooski amounts to 40 cents on a dozen screen doors—the average profit thereon—and similar, though less discrimination exists in respect to intermediate destinations. While the eastbound rates are charged to be unreasonable and unjust, it is manifest that this charge is based upon a comparison with the westbound rates. The real gravamen of the complaint is the discrimination in the rates east and west.

The joint answer of the Grand Trunk Railway System and the Central Vermont Railway Company, admitting the rates as stated, avers that the rates from Fenton, Owosso, and other screen factories in Central Freight Association territory to western points are on a commodity basis practically the same as fifth class, and that the same basis has been extended eastward to Winooski, Vt.; and denies violation of law or injury to the complainant in this adjustment. It also alleges that Winooski brings lumber from the South at a greater expense, and a part of the wire from Detroit, paying freight both ways; and

further justifies higher eastbound rates on the ground of the empty car movement westward.

There are similar factories to that of complainant at Owosso, Adrian, Detroit, and Hillsdale, Mich.; Perla, Ark.; Memphis, Tenn.; Minneapolis, Minn.; Burlington and Winooski, Vt., and Philadelphia, Pa., manufacturing what is known as stock screens; one at Cortland, N. Y., not doing a large business, and one at Portland, Me., principally confined to the manufacture of wire screens to fill special orders and not furnishing stock goods for the trade.

The eastern factories do not furnish a great proportion of the western trade, though reaching Detroit, Chicago, and other distributing centers, even sometimes as far west as San Francisco.

The eastbound rates are commodity rates and are practically the same as fourth class, while the westbound are practically fifth class.

The class rates from Boston to Chicago are as follows by the Standard trunk lines:

1	2	3	4	5	6
75	65	50	35	30	25

and from Chicago to Boston:

82	71	55	39	33	27

The differential lines have westbound rates as follows:

70	61	47	33	28	23½

By the defendants' line from Chicago to Winooski the class rates are:

82	71	55	39	33	27

But its westbound rates between the same points are:

65	57	44	31	26	22

Screen doors average about 250 pounds to the dozen and at 36 cents per hundred pounds the rate per dozen is about 90 cents, while at a 20-cent rate the average is about 50 cents per dozen, or a difference of 40 cents per dozen in the amount of

freight, a sum which complainant alleges is above the measure of the manufacturer's profits for the last year or more.

The lake and rail rate to Detroit is 21 cents per 100 pounds from Winooski. The distance by this route is 161 miles by rail to Ogdensburg, thence to Detroit 493 miles, or a total of 654 miles, while the rail distance by the Grand Trunk to Detroit is 658. By this rail and lake route the time of shipments is one day to Ogdensburg and three days thence to Detroit. The rail route is not expected to make much better time.

To a considerable extent the bulky products of the West require for their transportation equipment in excess of that necessary to the carriage of west-bound freight, so that there is a greater movement of empty cars under light power westward, which increases the expense of transportation to the carriers.

Estimates of the hauling of empty cars have been from time to time made, and show a tendency toward equalizing the movement as compared with former years, and this tendency is likely to be progressive with the movement of population and manufacturers westward, but it even yet, as estimated by a witness of defendants, approaches one-third the total car movement on that line westward. This naturally leads carriers to offer lower rates in that direction in order to secure traffic to occupy otherwise empty equipment and to help bear the expense of operation.

This condition was recognized by the complainant, who at the hearing conceded that as a matter of railroad economy the principle was correct until it interfered with the business of shippers, by making a discrimination between competitors similarly located.

For its west-bound business Fenton enjoys some advantages as to classification and rates, as does Winooski, in that practically the fifth-class rates on screen doors and windows apply.

The complainant company five or six years ago had a trade in eastern cities of from 30 to 50 cars annually, and now only 12 to 15 cars, as stated by its manager, though one of defendants' witnesses alleged that complainant's shipments for the last season, after the establishment of the 20-cent rate to De-

troit, were slightly greater than the year before over defendants' line.

The class rates from Winooski to Boston are as follows:

50	42	33	24	18½	15½

while the rate on wire screen doors and windows is 20 cents—but little higher than the fifth-class rate and considerably below the fourth-class rate.

To New York City the class rates are from Winooski:

51	45	35	24	20	16

but from Winooski on wire screen doors and windows are 21 cents to Pier 34, East River, 19 cents to 33d, 60th, 130th, and Melrose Junction, and 15 cents to Pier new 29, East River; and these rates are near or lower than the fifth-class rate. There is, however, a summer basis for rates from Winooski to New York on class goods considerably lower than the rates above given, presumably with the open water navigation, and extending in 1905 from April 10 to December 23. Between these dates class rates were:

39	34	27	19	17	15

while the rates on screen doors and windows were from 15 to 21 cents to various New York terminals, or ranging from sixth to above fourth class rates according to point of delivery.

An effort was made to show that complainant had some advantage in the matter of procuring supplies—securing his lumber from nearby points and the wire screen at cheaper freight rates than his competitors in the East, and in illustration it was shown that from Cortland, N. Y., though more distant from Fenton, the rates were 4½ cents, or 90 cents per ton less than to Winooski on wire screen, though it was not shown that either manufacturer secured any material supplies from that point.

The lumber—pine from the South, beech for window screens from points in Michigan—for Fenton was, the defense charged, secured at rates which gave that point an advantage over Winooski, and the complainant was as confident that on at least

part of the lumber supplies from the South and from Canada its competitors in the East fared better than it.

It is impossible with the testimony offered to accurately determine the total cost of manufacture at each point—the price as well as freights on the raw material. Into such a problem must of necessity enter the other factors of rents, interest, labor, fuel, efficiency, etc., and even after all these are determined something of profits must depend upon administration, volume, expense of sales, etc. It is easily seen that to strike a balance under such conditions is a matter of difficulty, and when found offers no ground to the carriers nor to this Commission to equalize the ultimate conditions of manufacture. These conditions are not stable, and rates established on such considerations would be subject to revision with each season. Indeed, it is doubtful if two establishments at the same point engaged in the manufacture of the same or competing articles conduct their business on the same basis of cost and profits, and attention is called to this only to illustrate the impossibility of adjusting rates on such considerations.

In support of the formal charge of unreasonableness of the rates in question no testimony was offered except comparison of the rates hereinbefore stated.

The carload minimum on wire-screen doors and windows is 18,000 pounds from Winooski to Detroit, and at the time of filing of the complaint was 14,000 pounds on that from Fenton eastbound, but on July 1, 1906, it was increased to 16,000 pounds. This smaller carload minimum is usually counted a substantial advantage as enabling the shipper to reach smaller markets in the distribution of some commodities, but on stock goods, such as screens, to large distributing centers, it is apparently of less importance.

The complainant in this case claims that an increase of the smaller carload minimum would cut little figure if the larger cars were always furnished that would permit loading up to such minimum.

CONCLUSIONS.

Generally rates are lower for the transportation of west-

bound traffic than for eastbound, although there are exceptions to this general rule. This feature in the adjustment of rates is probably due more to the preponderance of empty-car movement westward than to any other cause, though other varying causes have doubtless entered into the matter in greater or less degree in respect to different commodities. Some disparity, therefore, between the rates on eastbound and westbound traffic seems to be justified by the conditions resulting from the empty-car movement in one direction. Within reason, therefore, such disparity in rates, though a discrimination, is not unreasonable or unlawful.

It has been seen that there is a difference of 17 cents between the first-class eastbound and westbound rates between Winooski and Chicago by the defendants' line, and 8 cents as to articles of the fourth class, and 3 cents as to those of the fifth class. No satisfactory reason appears why there should be a greater disparity between the rates on the traffic in question eastbound and westbound than that which prevails on articles of substantially the same character in the classes; yet it is not clear, on the other hand, but that a somewhat greater disparity in these rates than would be indicated by the classes might exist without unjust discrimination against the complainant. But it is clear that some readjustment of these differences is required to promote the ends of justice and the requirements of the law. This record, however, scarcely furnishes an adequate basis for the determination of the exact changes that should be made.

The case will, therefore, be retained with the expectation that the carriers will make a substantial readjustment of these rates in accordance with the views herein expressed. In the event of failure on the part of defendant carriers to substantially conform to the recommendations herein, the complainant will have leave to proceed further. No order will now be made.

No. 797.

MENASHA WOODEN WARE COMPANY

v.

ATCHISON, TOPEKA AND SANTE FE RAILWAY COMPANY; CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY; CANADIAN PACIFIC RAILWAY COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY; COLORADO MIDLAND RAILWAY COMPANY; COLORADO AND SOUTHERN RAILWAY COMPANY; DENVER AND RIO GRANDE RAILROAD COMPANY; GREAT NORTHERN RAILWAY COMPANY; MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILWAY COMPANY; MISSOURI PACIFIC RAILWAY COMPANY; NORTHERN PACIFIC RAILWAY COMPANY; OREGON RAILROAD AND NAVIGATION COMPANY; OREGON SHORT LINE RAILROAD COMPANY; AND UNION PACIFIC RAILROAD COMPANY.

Decided August 21, 1906.

It appears that defendants' rates on woodenware are higher from Menasha, Wis., to north Pacific coast terminal points than from such Pacific coast terminals to Missouri River and Mississippi River points and to Chicago common points, including Menasha. Upon complaint that such rate adjustment results in unreasonable rates from Menasha and undue preference to Pacific coast woodenware shipments. *Held:* (1) That there is no sufficient basis in the record for a conclusion that the rates involved are unreasonably excessive; (2) that existing disparities in the rates eastbound and westbound on the traffic in question constitute undue discrimination against complainant, but this record fur ishes

no sufficient basis for such specific order respecting the exact adjustment of the rates on the different articles involved that would fulfill the requirements of the law as to justice and equality; and (3) that no order will be made at this time, but it is expected that defendants will so readjust the rates as to remove the undue discrimination.

Cyrus Bullard for complainant.

James B. Kerr for Northern Pacific Railway Company.

Chester M. Dawes for Chicago, Burlington and Quincy Railway Company.

W. T. Rankin for Chicago, Rock Island and Pacific Railway Company.

N. H. Loomis for Union Pacific Railroad Company.

Robert Dunlap for Atchison, Topeka and Santa Fe Railway Company.

J. C. Jeffrey for Colorado Midland Railway Company.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner:*

It is alleged by complainant that unreasonable rates and undue prejudice and disadvantage result from defendants' adjustment of rates on woodenware, under which a much higher rate is charged on woodenware articles shipped by it from Menasha, Wis., to north Pacific coast terminal points than is applied to the like kind of traffic shipped from such Pacific terminals to Missouri River and Mississippi River points and to Chicago common points, including Menasha; and it is also claimed by complainant that such rate adjustment results in undue preference to Pacific coast woodenware shipments to points in Missouri River and Mississippi River territories, and even in Chicago common point territory. The proceeding is brought by the complainant in its own behalf and also in behalf of other manufacturers of woodenware located in Wisconsin and States contiguous thereto.

The complainant, as a firm and later as a corporation, has been engaged for many years in the manufacture, sale, and shipment of woodenware, such as pails, tubs, barrels, kegs, and kits, having its principal office at Menasha, Wis. Complainant

owns and controls large tracts of timber land in Wisconsin, intended for use in its business and sufficient for that purpose for many years. It also has feeder factories or mills at Ladysmith and Edgar, Wis., and Carney and Covington, Mich. Its product is sold largely to packers of meat, fish, fruit, and vegetables. The complainant has a large capital invested in its various plants and ships from 800 to 1,000 carloads per year. Menasha is located in Wisconsin and is served by the Chicago, Milwaukee and St. Paul, Chicago and Northwestern and Wisconsin Central systems, neither of which are parties to this proceeding. There is another woodenware factory in Two Rivers, Wis., one in Bay City, one in Saginaw, Mich., and another in Minneapolis. There are also numerous small factories.

At Tacoma, Wash., a woodenware factory has been established in recent years, and part of its product, consisting of wooden pails, tubs, and kits, but principally what are called lard tubs, is shipped and sold to beef and pork packers in the Missouri Valley in competition with complainant's product. The complainant formerly enjoyed a considerable trade on the Pacific coast, consisting largely of candy, fish, and fruit packages, but on account of the competition of the Tacoma factory the trade of the complainant on the Pacific coast has greatly decreased. Complainant's annual manufactured product averages over $1,000,000 in value. It owns and uses about 120 cars of 30,000 to 50,000 pounds capacity each, suitable for carrying its product, and for the use of which it receives from the railways, whether loaded or empty, 0.6 cent per mile, while it pays the regular tariff rates on its freight. It also uses the cars of the railroad companies whenever necessary. Until the competition with the Tacoma factory commenced about 40 per cent of complainant's product was shipped to Missouri River points. Under the 65-cent rate the Tacoma factory has shipped to the Missouri River packing houses about 130 carloads per year.

The present rate on woodenware in straight or mixed carloads, minimum weight 15,000 pounds, from Menasha, Wis., to north Pacific coast points is $1.35 per 100 pounds, and applies not only upon pails, tubs, kits, and barrels, but upon all articles

specified as woodenware in defendants' freight classification. In 1891 the rate was $2.10 per 100 pounds; in April, 1893, it was $1.85 per 100 pounds; July 24, 1893, the rate was $1 per 100 pounds; October 20, 1894, it was $1.10, and June 24, 1897, it was again reduced to $1; June 25, 1898, the rate was increased to $1.25, and January 18, 1904, to the present rate of $1.35. The rate of $1.35 per 100 pounds applies from Missouri River common points and all points east thereof, including the Atlantic seaboard, and the destinations are limited to north Pacific coast terminals, which are described in defendants' schedules as Anacortes, Ballard, Blaine, Edmonds, Everett, Fairhaven, Lowell, Mount Vernon, Olympia, Seattle, Snohomish, Tacoma, Vancouver, Whatcom, and Wooley, in the State of Washington, and Albina, Astoria, East Portland, and Portland, in the State of Oregon.

By Transcontinental Freight Bureau Eastbound Tariff No. 2-C, I. C. C. No. 194, effective July 1, 1902, rates per 100 pounds on woodenware, straight or mixed carloads, minimum weight 15,000 pounds, were provided as follows: From north Pacific coast terminals only, including Tacoma, Wash., to Missouri River common points, $1; to Mississippi River common points and Chicago and common points, $1.05. The same tariff specifies a rate of 80 cents per 100 pounds on butter, tubs, pails, washtubs, and barrels, straight or mixed carloads, minimum weight 17,000 pounds, from Tacoma, Wash., to—

St. Paul, Minn., via Northern Pacific Railway.

Minneapolis, Minn., via Northern Pacific Railway.

Minnesota Transfer, Minn., via Northern Pacific Railway.

Duluth, Minn., via Northern Pacific Railway.

Superior, Wis., via Northern Pacific Railway.

West Superior, Wis., via Northern Pacific Railway.

Omaha, Nebr., via Northern Pacific Railway in connection with Burlington and Missouri River Railroad, via Billings, Mont.

Council Bluffs, Iowa, via Northern Pacific Railway in connection with Burlington and Missouri River Railroad, via Billings, Mont.

Leavenworth, Kans., via Northern Pacific Railway in con-

nection with Burlington and Missouri River Railroad, via Billings, Mont.

Kansas City, Mo., via Northern Pacific Railway in connection with Burlington and Missouri River Railroad, via Billings, Mont.

St. Louis, Mo., via Northern Pacific Railway in connection with Burlington and Missouri River Railroad, via Billings, Mont.

Supplement 14 to the eastbound tariff above mentioned, effective November 1, 1902, provided a rate of 65 cents per 100 pounds, but confined in its application to transportation from north Pacific coast terminals to Missouri River common points of "wooden pails and tubs (including butter tubs), kits, and barrels, minimum carload weight when loaded in furniture cars, 34,000 pounds, ordinary box cars 30 feet or less in length, 20,000 pounds; over 30 feet, to and including 34 feet, 22,000 pounds; over 34 feet, to and including 36 feet, 30,000 pounds; over 36 feet, 34,000 pounds."

It appears that this 65-cent rate was put in effect at the instance of the Northern Pacific Railway Company, and that it does not now apply via the Oregon Railway and Navigation Company or the Atchison, Topeka, and Santa Fe line, nor to points south of Kansas City. On April 30, 1903, the rates of $1 to Missouri River common points and $1.05 to Mississippi River and Chicago common points were canceled, and the rate on general woodenware, in straight or mixed carloads, minimum weight 15,000 pounds, from north Pacific coast terminals to such destinations, was fixed at $1.25 per 100 pounds, and this rate is still in force.

The rates now in force, therefore, are $1.35 westbound from Missouri River points and all points east thereof to north Pacific coast terminals; a rate of $1.25 eastbound from north Pacific coast terminals to Missouri River points and all points east thereof; a rate of 80 cents on tubs, pails, and barrels to St. Paul, Minneapolis, Duluth, Superior, and West Superior, via the Northern Pacific, and to St. Louis via the Northern Pacific and Chicago, Burlington and Quincy, and a special rate of 65 cents per 100 pounds on wooden pails, tubs, kits, and barrels,

from north Pacific coast terminals to Missouri River points applying with the exceptions above noted.

The rate on woodenware generally, from Menasha to Missouri River common points, is 18½ cents per 100 pounds. This rate was made effective July 1, 1894. Prior to that date the rate was 17½ cents per 100 pounds. The rate from Menasha to St. Paul on barrels, kits, kegs, etc., is 17½ cents. These rates apply in both directions. There is a special rate on woodenware (Class D) of 14 cents from St. Paul to Chicago.

The following table shows the distances, eastbound, from Tacoma, and westbound, from Menasha:

FROM TACOMA, WASH.

To—	Miles.	Route.
Sioux City, Iowa	1,855	Via Billings.
Omaha, Neb	1,912	Do.
Kansas City, Mo	2,069	Do.
Chicago, Ill	2,819	Via St. Paul.
St. Paul, Minn	1,909	

FROM MENASHA, WIS.

St. Paul, Minn	286	Via Wisconsin Central.
Sioux City, Iowa	608	Via Milwaukee.
Omaha, Neb	611	Do.
Kansas City, Mo	644	Do.
Tacoma, Wash	2,194	Via St. Paul.

The minimum carload weight on westbound traffic, general woodenware, is 15,000 pounds, while the minimum carload weight on pails, tubs, etc., to Missouri River points under the 65-cent rate varies from 20,000 to 34,000 pounds, according to the dimensions or character of the car used. It is difficult to load 15,000 pounds of some of the articles included in the "general woodenware" tariff. Kits, kegs, and barrels with both ends headed occupy much more space than an equal weight of pails, tubs, etc., which can be nested.

The complainant uses pine and bass wood in manufacturing

its tubs and pails. The Tacoma factory uses spruce and cedar. This produces a somewhat lighter article and on that account is often preferred by the trade. The cost of labor at Tacoma is somewhat higher than at Menasha, but the total cost of production, on account of the difference in the price of timber, is considerably less at Tacoma than at Menasha. The complainant submitted an estimate of the cost of manufacture at Tacoma compared with its cost at Menasha, and under such estimate and the prevailing freight rates the cost of putting lard pails at the Missouri River would be $2.62 per dozen for the Tacoma pail and $2.95 per dozen for the Menasha pail.

This, of course, would be sufficient to turn the trade in favor of the Tacoma product to the extent that the supply would meet the demand, and it would also follow that with such greater cost the Menasha pail could not compete in or about Tacoma, and probably could not at any north Pacific coast points; but in view of the fact that the complainant's estimate of the cost of timber at Tacoma was from $2 to $6 per thousand less than the figure stated in testimony by the manager of the Tacoma factory, it is clear that such estimate may be widely inaccurate. The difference in cost to these producers on pails delivered at the Missouri River is perhaps more clearly indicated by the fact that under the 80-cent rate to the Missouri River the Tacoma factory could not successfully compete, and it can do so under the 65-cent rate. We can only definitely find that the Tacoma pail costs less to produce than the Menasha pail; that with the 65-cent rate such lower cost enables the Tacoma factory to undersell the eastern manufacturer at north Pacific coast points. This, however, takes no account of the capacity of the Tacoma plant, present or prospective, or the desire of the Menasha concern to dispose of surplus, products at obtainable prices.

The difference between the rates on general woodenware of $1.35 westbound and $1.25 eastbound may fairly be taken as the measure of what constitutes, in the carrier's judgment, the difference between the transportation conditions on the east and west hauls, though the evidence does not indicate what such difference in conditions may be. The 80-cent rate via the North-

ern Pacific to Mississippi River points and other points named is a special rate, fixed upon conditions other than those pertaining to the difference in actual transportation conditions, and it is avowed by the officer of the Northern Pacific in charge of its traffic that the 65-cent rate to the Missouri River was made for the purpose of encouraging the woodenware industry in North Pacific coast territory, and in consequence securing increased traffic and revenue. The interest of the Northern Pacific as a common carrier is also promoted by increasing its westbound traffic at compensatory rates, especially if such increase would not operate to materially decrease the eastbound movement.

The last annual report filed by the Northern Pacific with the Commission shows that for the year ended June 30, 1905, the loaded-car mileage was, eastbound, 162,935,074, and westbound, 107,859,996 miles; while the empty-car mileage was, eastbound, 26,435,392, and westbound, 85,618,812 miles. This shows a great preponderance of empty cars westbound, and indicates that a rate on the cheap woodenware products manufactured by complainant and other factories immediately east of the Mississippi River to north Pacific coast terminals, operating to increase their movement, would promote, instead of injure, that carrier's interest.

CONCLUSIONS.

There is no sufficient basis in the record for a conclusion that the rates involved are unreasonably excessive. Respecting the alleged discrimination by disparity of rates on traffic eastbound and westbound, respectively, it is to be observed that the preponderance of empty-car movement westward, so often urged as a reason for lower westbound rates than eastbound, is wholly ignored in respect to the traffic involved in this case. There may be justification, however, in the existence of other facts and conditions, for, as we have often found, that which may be a controlling factor in one case may be so overbalanced by other factors appearing in a different case that it becomes of comparatively little consequence. While we are satisfied, however,

that the existing disparities in the rates on the traffic under consideration eastbound and westbound, respectively, constitute undue discrimination against the complainant and others in like situation we find no sufficient basis in this record for such specific order as to the exact adjustment of the rates on the different articles involved that we would feel satisfied would fulfill the requirements of the law as to justice and equality.

We will therefore make no order at this time, but it is expected that the defendant carriers will take such action in the readjustment of the rates as will so diminish the existing discrimination as to remove all just cause of complaint. The case will be retained for such further action as may seem proper in the event of their failure so to do.

No. 861.

HASTINGS MALTING COMPANY
v.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

Decided August 23, 1906.

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1. Defendant's rate on anthracite coal from Superior, Wis., to Hastings. Minn., is $1.75 per net ton; on bituminous coal, $1.40 per net ton; whereas its rates from Superior to Afton, Minn., the traffic passing through Hastings, are $1.40 per net ton on anthracite and $1.05 on bituminous coal. *Held*, (*a*) That the third and fourth sections of the act are not violated, because competitive conditions exist at Afton which prevent the maintenance of higher coal rates than those now in effect; (*b*) that such coal rates to Hastings are unreasonably high and should not exceed $1.50 per net ton on anthracite and $1.25 per net ton on bituminous coal; (*c*) that as the Commission has not now authority to fix rates of defendant, no order will be made.

2. As Duluth, Minn., has the same coal rates to Hastings as Superior, Wis., the railroad commission of Minnesota has ample authority to control the situation, and complainant should first apply to that commission.

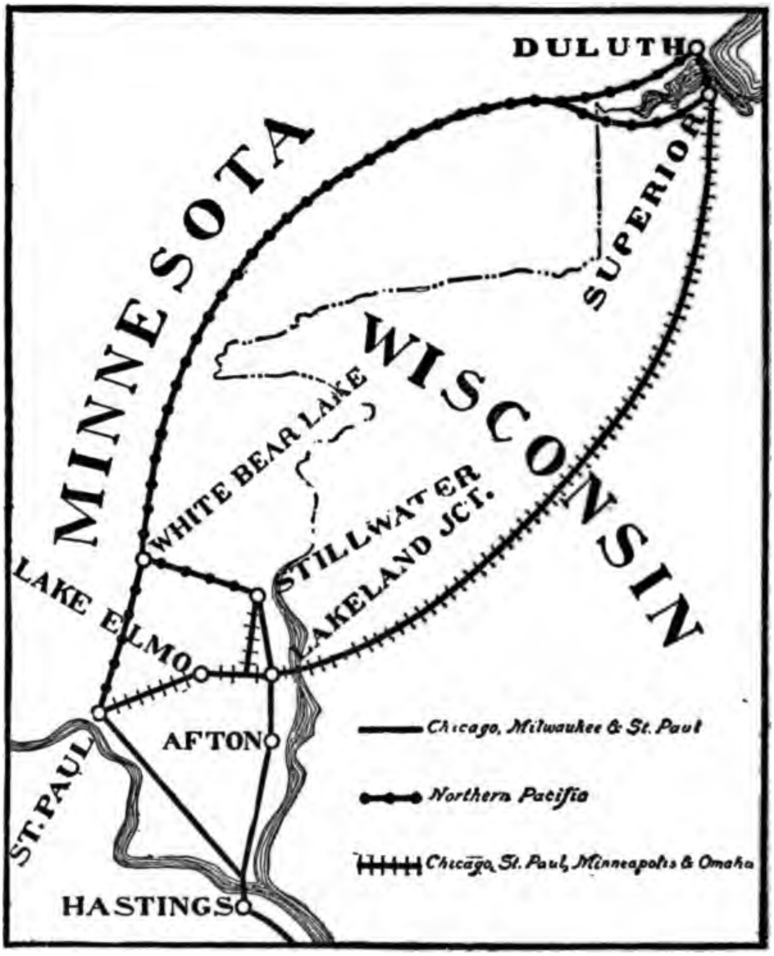
3. It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, when considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of rates in effect, and in a case of this sort the Commission does not feel that it should interfere until strong reasons for such interference are presented.

James Manahan and *Grant Van Sant* for complainant.
C. S. Jefferson and *F. W. Root* for defendant.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

This complaint is directed against the rates of the defendant for the transportation of both anthracite and bituminous coal from Superior, Wis., to Hastings, Minn., and can be best understood by an examination of the accompanying map.



It will be seen that the Northern Pacific Railway extends from Superior and Duluth to St. Paul, and that the line of the defendant extends from St. Paul to Hastings. The defendant has certain contract rights by virtue of which it may, if it sees fit, operate its own trains over the line of the Northern Pacific between St. Paul and Superior, and it in fact publishes rates on coal from Superior to Hastings.

A branch of the defendant runs from Hastings, in a northerly direction, to Stillwater, and a branch of the Northern Pacific leads from White Bear Beach, which is north of St. Paul, to Stillwater. Traffic may therefore reach Hastings either over the Northern Pacific to St. Paul and thence over the line of the defendant to Hastings, or over the Northern Pacific to Stillwater and thence over the line of the defendant to Hastings. It is 152 miles from Duluth and 148 from Superior to St. Paul, and the distance to Stillwater is the same. From St. Paul to Hastings it is 20 miles and from Stillwater 26.

The Chicago, St. Paul, Minneapolis and Omaha Railway, a part of the Northwestern system, runs from St. Paul to Superior, crossing the Stillwater branch of the defendant at Lakeland Junction. Afton is 15 miles north of Hastings, upon the Stillwater branch. Lakeland Junction is about 5 miles north of Afton. Lake Elmo is a station upon the Northwestern line 12 miles from St. Paul. The distance across the country from Afton to Lake Elmo was said to be some 8 miles.

The rate of the defendant on anthracite coal from Superior and Duluth to Hastings is $1.75 per ton of 2,000 pounds; on bituminous coal, $1.40. Its rates to Afton are $1.40 on anthracite and $1.05 on bituminous. The complainant alleges that the defendant transports coal from Superior to Afton, through Hastings, and that it therefore violates, in maintaining these rates, the third, fourth, and first sections of the act to regulate commerce.

Coal rates by all lines from Duluth and Superior to St. Paul and Minneapolis are $1.25 per ton on anthracite and 90 cents on bituminous. Under the laws of Minnesota no higher charge is permitted at the intermediate point than is made to the more distant point. It follows that rates by the Northwestern line

to Lakeland Junction and Lake Elmo, and also to Stillwater, which is regarded as upon the main line, although not strictly so located, are the same as those to St. Paul, and the justification of the defendant for charging a lower rate at Afton than is made at Hastings is found in the competitive conditions which are thereby created. The defendant alleges that if a higher rate is maintained at Afton than those now in effect the coal consumed in the vicinity of Afton, and especially in territory intermediate between Afton and Lake Elmo, will be transported via the Northwestern and not by its own line.

Afton is a small village of a few hundred inhabitants. It supports two or three stores, but has apparently no resident coal dealer, coal being delivered there usually from the cars.

Hastings is a prosperous town of some 4,000 population, with the mercantile development which is ordinarily found in a thrifty community of that size. Its stores are much superior to those of Afton, and it has three local coal dealers.

The testimony showed that anthracite coal was sold at Afton for 50 cents a ton less than at Hastings, and that the effect of this was to induce farmers living between Afton and Hastings to buy their supplies of coal at Afton. This further leads to their selling various farm products at Afton and purchasing supplies at the stores of that village rather than in Hastings. It also creates a general impression that prices charged at Hastings are exorbitant, since the farmers do not understand the reason for the higher price of coal.

We find, however, that if higher rates were maintained at Afton than those now in force, the effect would be to send many purchasers of coal who now obtain their supply in Afton to Lake Elmo and Lakeland Junction. No higher rates than the present can be maintained if Afton is to compete in intermediate territory with Lake Elmo. The quantity of coal now disposed of at Afton is very small, being but a few carloads annually.

The tariffs of the defendant naming rates of $1.40 and $1.05 on anthracite and bituminous coal to Afton specify the route via Stillwater. We are inclined to think that this coal has in fact been transported both through Stillwater and through Hastings.

It appeared that by virtue of a contract between the Northern Pacific and the defendant, the defendant had the right to operate its trains, if it saw fit, over the rails of the Northern Pacific between St. Paul and Superior, but that in point of fact it did not at the present time do this. The testimony indicated, without conclusively showing, that the Northern Pacific transported coal from Duluth and Superior to St. Paul, when destined for points like Hastings beyond St. Paul, upon the line of the defendant for 60 cents per ton. There was evidence that when the line from St. Paul to Duluth, now operated by the Northern Pacific, was an independent property the usual division on hard coal had been 80 cents per ton, but that this had sometimes fallen as low as 60 cents. It further appeared that while the defendant had no right under its contract to operate its own trains over the branch line of the Northern Pacific leading from White Bear Beach to Stillwater, the Northern Pacific did in fact deliver to the defendant coal at Stillwater destined for points beyond upon the same division of the rate as when delivered at St. Paul.

We are of the opinion that the rates of the defendant upon both anthracite and bituminous coal from Superior to Hastings are unreasonably high. Hastings is but 20 miles beyond St. Paul, and the defendant charges in each case 50 cents per ton above the St. Paul rate for this additional service.

It is urged that competition between Superior and St. Paul is extremely severe, and that this has produced abnormally low rates upon coal. We see nothing abnormal about a rate of $1.25 per ton of 2,000 pounds for the transportation of anthracite coal a distance of 150 miles when the traffic moves in such quantities and over lines having the amount of business transacted by the various railroads leading from St. Paul to Superior. We regard this charge as sufficiently high, and think that any higher charge would be unreasonable. The rate upon soft coal of 90 cents per net ton can with more propriety be styled a low one.

But assuming that competition has produced a low rate, still Hastings is entitled to the benefit of that rate. These towns to the south of St. Paul suffer in many respects from the competitive conditions which exist at St. Paul, as is well illustrated

by another case between these same parties which was heard at the same time with this. If these towns must bear the burden of this competition they should also be entitled to its benefits.

It is said, however, that the expense of transferring this traffic at St. Paul is so great that this justifies a charge of 50 cents per ton for the additional service. The Commission is well aware, from testimony taken in other cases, that the expense of delivering to consignees or to connections in large and congested cities often exceeds the cost of transportation for many miles and must properly be considered in determining the reasonableness of freight rates. It does not appear in this case what the cost of transfer is. It does appear that the Northern Pacific places cars destined to the defendant upon certain tracks, where they are taken by the engine of the defendant. It would seem hardly probable that the expense of placing these cars in the trains of the defendant for transportation to Hastings could be excessive. It must also be noted that the defendant can, if it prefers, handle this traffic through Stillwater, and it is hardly to be presumed that the cost of transfer can be exorbitant in a town of that size.

It must further be noted that the rate of $1.25 to St. Paul includes a delivery to the consignee at St. Paul, and it is hardly credible that the cost of making that delivery could be on the average less than the cost of making the transfer to the line of the defendant. If it be objected that the defendant bears a part of the cost of the transfer while the Northern Pacific bears the entire expense of delivery, it may be replied that for the local transportation the Northern Pacific receives the entire $1.25 per ton, whereas for its service in the through transportation it probably receives not in excess of 80 cents per ton. The defendant obtains for taking these cars from the track of the Northern Pacific and transporting them 20 miles to Hastings at least 95 cents per ton in case of anthracite and 60 cents in case of bituminous.

It is also instructive to note that most of the soft coal consumed at Hastings comes from the South, and is hauled a distance of from 400 to 450 miles at a rate of $1.40, the same as that from Superior. This is, of course, because the defendant company obtains the long haul upon that traffic. But the long

haul must be worth something or the defendant would not desire it; and if there is a profit in the transportation of coal 450 miles for $1.40 a ton, there must be a decidedly handsome profit in the transportation of the same commodity less than one-half that distance, under equally favorable conditions.

We find that the rate on anthracite coal from Superior to Hastings, over the line of the defendant, ought not to exceed $1.50 per net ton, and that the rate on bituminous coal ought not to exceed $1,25 per net ton.

It appeared upon the hearing that coal rates from Duluth and Superior to points beyond St. Paul and Minneapolis, including Hastings, had been the subject of complaint to the railroad commission of Minnesota, and the subject of conference by that commission with the railways. While the commission issued no formal order in the premises, it expressed its satisfaction with the rates now in force at the time they were established.

Conclusions.

The defendant does not apparently violate the third or fourth sections by maintaining lower rates to Afton than to Hastings. Afton is somewhat nearer Superior by the direct route than is Hastings, but the real excuse for the lower rate at that point is found in the competitive conditions, which prevent the maintenance of higher rates than those now in effect. It has been often decided by the courts that such competitive conditions may excuse what would otherwise be an unjustifiable discrimination.

Nor does it appear that, upon the facts in this case, any good purpose would be served by making and enforcing an order that the defendant cease and desist from this alleged discrimination. The quantity of coal transported by the defendant to Afton is small as compared with that transported to Hastings, and if it were compelled to choose between advancing its rate at Afton and therefore retiring from that business or reducing its rate at Hastings, its interest would compel it to advance the Afton rate. This would force those who now purchase their coal at Afton to pay more for it there or at some other point, and would only

benefit the complainant by diverting from Afton to that city a small amount of business.

It has been found that the rates to Hastings are unreasonably high. At the present time this Commission has no authority to fix the rates of the defendant, but it would ordinarily, upon this finding of fact, direct the defendant to cease and desist from its present rates. Under the circumstances of this case, however, no order will be made.

Superior is located in the State of Wisconsin, and the transportation from Superior to Hastings is therefore interstate and under the jurisdiction of this Commission. Duluth is in the State of Minnesota. Rates from Duluth and Superior must be the same. Almost the entire transportation is in the State of Minnesota, and the people who suffer from the imposition of excessive rates are inhabitants of that State. While the producers of this coal may be remotely interested, the principal question as presented by this record concerns the State of Minnesota alone.

The railroad commission of that State has ample authority in law, and perfect control in fact, over the whole situation. It appears that these rates have been the subject of discussion and conference between that commission and the railroads, and that the present rates were established not by formal order of the commission, it is true, but by its sanction and approval. It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, where considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of rates in effect, and in a case of this sort we do not feel that the Federal Commission should interfere until strong reasons for such interference are presented. The complainant should first apply, at least, to the State commission.

This complaint will therefore be dismissed without prejudice to the right of the complainant to subsequently raise the question of the reasonableness of these rates under the first section.

No. 860.

VILLAGE OF GOODHUE
v.
CHICAGO GREAT WESTERN RAILWAY COMPANY.

Decided August 23, 1906.

1. Defendant by charging a rate on grain of 15 cents per 100 pounds from Goodhue, Minn., to Chicago, Ill., while it charges only 12½ cents per 100 pounds from Red Wing, Minn., to Chicago, 14 miles farther off, the traffic passing through Goodhue, does not in this case violate the fourth section of the act, because substantial dissimilarity of circumstances and conditions exist between Goodhue and Red Wing. Neither does such rate adjustment violate the third section, as the discrimination was not shown to be *undue*. Decision of the United States Supreme Court in *E. T. V. & G. Ry. Co.* v. *I. C. C.*, 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516, cited.
2. No opinion should be expressed upon the reasonableness of the 15-cent rate from Goodhue, as the present record is too meager; but in dismissing complaint it is done without prejudice to right of complainant to put in issue the reasonableness of such rate by subsequent proceedings.

E. T. Young, Attorney-General of Minnesota, for complainant.

C. A. Severance for defendant.

Report and Opinion of the Commission.

Prouty, *Commissioner:*

The village of Goodhue is 14 miles south of the city of Red Wing, upon the line of the defendant to Chicago. Traffic from Red Wing for Chicago, by the defendant's line, passes through Goodhue. The rate on grain from Red Wing to Chicago is 12½ cents per 100 pounds by the line of the defendant, and from Goodhue 15 cents per 100 pounds. The complaint is that this adjustment of rates violates the third, fourth, and, incidentally, the first sections of the act to regulate commerce.

The accompanying map shows the location of the different points and the different lines of railway involved. From an examination of that it appears that the main line of the Chicago, Milwaukee and St. Paul Railway extends from Minneapolis and St. Paul—which may be treated as one city—to Chicago, along the west bank of the Mississippi River, through the city of Red Wing. The line of the defendant railway also extends from Minneapolis to Chicago, but at a considerable distance west of the line of the Milwaukee road above referred to. Leaving the main line at Randolph, a branch of the defendant extends easterly to Red Wing and thence southerly from Red Wing, through Goodhue and Pine Island, to McIntyre, where it again joins the main line. Traffic from Red Wing for Chicago ordinarily passes south, through Goodhue and Pine Island, and so onto the main line at McIntyre.

The Chicago, Milwaukee and St. Paul now maintains, and has ever since 1888 maintained, a rate of 12½ cents upon grain from Red Wing to Chicago. This rate was in effect before the defendant acquired the line from Randolph to Red Wing and from Red Wing south. Both the defendant and the Milwaukee road publish a local rate of 12½ cents upon grain of all kinds from Minneapolis to Chicago; and there is also in effect a proportional rate of 10 cents upon wheat and 7½ cents upon coarse grains. All grain from Minneapolis moves under these so-called proportional rates. Rates upon the river division of the Milwaukee road—that being the division running through Red Wing—do not exceed 12½ cents, but upon the lines of the defendant south of St. Paul and upon the interior lines of the Milwaukee they are 15 cents, as noted upon the map.

The first claim of the complainant is that the defendant by charging a rate of 15 cents at Goodhue while it only charges 12½ cents at Red Wing violates the fourth section; but the rate at Red Wing is made by the Milwaukee road, was in effect before the line of the defendant reached Red Wing, and would be in effect if there were no line of the defendant at Red Wing. In other words, the defendant meets a rate which it does not make and can not influence at that point. This creates, according to the decisions of the Supreme Court of the United States, such a dissimilarity of circumstances and conditions between

Goodhue and Red Wing, that the fourth section does not apply. *East Tennessee, V. & G. Ry. Co.* v. *Interstate Commerce Commission,* 181 U. S. 1, 45 L. ed. 719, 21 Sup. Ct. Rep. 516.

The second claim of the complainant is that the defendant by this adjustment of rates unduly discriminates against Goodhue. Certainly, it is a discrimination to charge Goodhue 15 cents, while it only charges 12½ cents at Red Wing; but the third section of the act does not prohibit discriminations, but only *undue* discriminations, and the Supreme Court of the United States holds, in the case above referred to, that the discrimination which the defendant practices in meeting the rate of the Milwaukee road at Red Wing is not undue.

The only remaining question is upon the reasonableness of the rate from Goodhue to Chicago. While this issue is made by the pleadings, the gravamen of the complaint is the discrimination under the third and fourth sections; not the excessive charge under the first.

No evidence was introduced upon the trial by either party bearing upon this question, except the rates themselves. Whatever is true at Goodhue must be equally true at a great number of these interior points which take the same 15-cent rate. The proper adjustment of that rate is of great importance to the growers of grain in this section and of equal importance to the railways, and the propriety of the rate in effect ought not to be passed upon without full investigation. We do not feel that upon the meager record before us any opinion should be expressed.

The complaint is therefore dismissed without prejudice to the right of the complainant to put in issue by subsequent proceedings the reasonableness of the rate from Goodhue to Chicago.

No. 847.

PINE ISLAND FARMERS' ELEVATOR COMPANY
v.
CHICAGO GREAT WESTERN RAILWAY COMPANY.

Decided August 23, 1906.

Upon the conclusions announced in the preceding case, *Village of Goodhue* v. *Chicago Great Western Railway Company*, (*ante*, 683), the complaint in this case should be dismissed without prejudice.

Ira B. Mills for complainant.
C. A. Severance for defendant.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner:*

This case is governed by the disposition made of *The Village of Goodhue* v. *The Chicago Great Western Railway Company, ante,* 683. Pine Island is upon the line of the defendant 18 miles south of Goodhue. The rates are the same, and no additional or different issues are raised either by the pleadings or the evidence.

The rates from Trout Brook, Hay Creek, and Claybank, stations between Red Wing and Goodhue, are less than 15 cents, and the complainant insisted in argument that since there was no competition at these points, whatever might be the case at Red Wing, the defendant violated the third and fourth sections by charging a higher rate at Pine Island. But while the Milwaukee Railroad has no physical connection with these villages, their proximity to Red Wing is such that the competition there

affects them in a diminishing degree, and justifies the rates as maintained.

The complaint is dismissed without prejudice to the right to subsequently try the reasonableness of the rate from Pine Island to Chicago.

No. 742.

C. R. CUTTER

v.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY; AND CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

Decided August 25, 1906.

Complainant shipped 13 carloads of beer between January 20, 1901, and March 4, 1902, as through shipments over defendants' lines, from Milwaukee, Wis., to Woodward, Okla., upon 8 carloads of which he was charged a rate of 73 cents per 100 pounds, and upon 5 carloads 75 cents; whereas during the time of such shipments defendants' rates on beer from Milwaukee to Oklahoma City, Okla., more distant than Woodward, were only 53 cents per 100 pounds. It appears that the rate to Woodward was 53 cents in 1892 and up to March 1, 1899, while the rate to Oklahoma City was 76 cents in 1892, which was reduced in 1893 to 53 cents, and so continued to 1899; and it also appears that on April 9, 1902, defendants reduced such rates to Woodward to 53 cents, where they have ever since remained. The history of the rates on beer to Woodward, Oklahoma City, and other points in that section of country stated. Upon all the facts and circumstances, *Held*, That the rates charged upon complainant's shipments were unjust and unreasonable to the extent of $715.05, and that complainant is entitled to reparation in that amount.

A. W. Anderson and *H. T. Newcomb* for complainant.

E. D. Kenna and *Robert Dunlap* for A. T. and S. F. Railway Company.

Burton Hanson for C. M. and St. P. Railway Company.

Report and Opinion of the Commission.

Corkrell, *Commissioner:*

The complainant presents two causes of complaint. First, that he shipped 13 carloads of beer from Milwaukee to Woodward, in Oklahoma Territory, between January 1, 1901, and March 3, 1902, and paid the defendants $2,538.68, the freight charges thereon, being at the rate of 73 and 75 cents per hundredweight, and that said charges were and are unreasonable and unjust, and a reasonable and just charge for such service would not have exceeded 53 cents per 100 pounds, or an aggregate of $1,823.63. For the amount paid in excess of this last sum, to wit, $715.05, he claims reparation.

Second, that defendants charged him 73 and 75 cents per 100 pounds from Milwaukee to Woodward, 870 miles, and only 53 cents per 100 pounds from Milwaukee to Oklahoma City, 858 miles, and thus subjected him to the payment of unreasonable and unjust rates, undue and unreasonable prejudice, and gave Oklahoma City an undue and unreasonable preference.

The Chicago and Northwestern was duly served with the complaint, and acknowledged its receipt in a letter from M. Hughitt, freight traffic manager, saying that the rates were made by the defendant, the Atchison, Topeka and Santa Fe Railway Company, and it had no voice in them. The Chicago, Milwaukee and St. Paul, answering, admits the shipments as charged at the rates charged, and states that the rates from January 1 to December 15, 1901, were only 73 cents per 100 pounds, and if more was paid during that time by the complainant the excess was an overcharge which it will rectify on proof. Denies all other charges. It alleges that it has no voice in the making of the rate to Woodward, but simply applied the joint rate published by others. The Atchison, Topeka and Santa Fe, hereinafter called the Santa Fe, admitted the shipments as charged, and states that the joint rate on beer January 1 to December 15, 1901, was 73 cents, and from December 15, 1901, to April 9, 1902, was 75 cents per hundredweight, and if a higher charge was made during said period it will refund the overcharges on proof. Denies all other charges.

In answer to the second cause of complaint, it states that Oklahoma City is on a different line of its road, being located upon the main line to Purcell, while Woodward is on the Panhandle branch running over to Amarillo, Tex.; that at Oklahoma City there was competition with other carriers, and the circumstances and conditions involved in transporting beer from Milwaukee to Oklahoma City were quite different from those involving such transportation to Woodward, and that it had to reduce its rate to 53 cents or go out of the business; that the extension of the Choctaw, Oklahoma and Gulf Railway westward from Oklahoma City to Alva and the establishment of a 53-cent rate on beer to Geary, Okla., compelled the respondent to reduce its rate to 53 cents in order to obtain any business. Denies all other charges.

The complainant's deposition was taken, and he was examined and cross-examined by the Santa Fe. He stated that he was engaged in the cold-storage business, agent for the Val Blatz Brewing Company, shipping beer in carload lots from Milwaukee to Woodward. He gave the d .tes of the shipments of the 13 carloads of beer from Milwaukee to Woodward, their respective weights, and the rates thereon, showing that the freight bills paid by him amounted to $2,538.68, and that he was familiar with freight rates to Oklahoma City from Milwaukee. He deemed a rate of 73 or 75 cents from Milwaukee to Woodward exorbitant and unreasonable, and stated that Woodward was the only place in the Territory that he knew of to which any such rates were charged; said that a rate of 53 cents to Oklahoma City was just and reasonable, and that a rate of 73 or 75 cents from Milwaukee to Woodward was unjust discrimination against ippers of Woodward.

The defendant, the Santa Fe, filed a deposition of D. L. Myers, chief clerk at Chicago, Ill., duly taken. Mr. Meyers states that he has held the position of chief clerk for six years, and is familiar with rates to Oklahoma City and to Woodward; that the eastern terminus of his road is at Chicago, and there connects with the Milwaukee, the Northwestern, and the Wisconsin Central, and that a joint tariff rate was put in effect between the defendants on beer from Milwaukee to Oklahoma

City, in the years 1901 and 1902, of 53 cents per 100 pounds, and a like tariff rate between Milwaukee and Woodward, which was, from January 1, 1901, to December 15, 1901, 73 cents, and from December 15, 1901, to April 9, 1902, 75 cents, and from April 9, 1902, to date, 53 cents per 100 pounds; that the 53-cent rate to Woodward was brought about by the establishment of a like rate over the Choctaw and Northern which connected with the Choctaw, Oklahoma and Gulf, creating competition at Alva, and fixing the rate on beer from Milwaukee to Geary, Okla., at 53 cents per 100 pounds.

Being obliged to move Alva traffic through Geary they could not exact at Alva a higher rate than at Geary, and this fixed the rate at Alva at 53 cents and extended the same rate to Woodward and other points on the Panhandle division, and the reduction was due solely to competition. He stated that Oklahoma City is on the main line between Galveston and Chicago and that Woodward is on the Panhandle branch running over to Amarillo, Tex., and that the traffic on this branch consists mostly of live stock moving in an easterly direction, and that beer and like articles can be handled very much cheaper per ton per mile over main line of railway than over branch line, and that there is competition between St. Louis and Milwaukee in the marketing of beer in the southwest territory, which affects the rate to Oklahoma City. That several lines cross each other at Oklahoma City and all compete for the business at this city, and this affects the rate to Oklahoma City, and that, in his opinion as a traffic man, the rate of 75 cents prior to the reduction in 1902 to Woodward was reasonable when compared with rates charged on other articles. The low rate of 53 cents was a commodity rate.

The complainant filed a claim for overcharge. Our record indicates that on car shipped June 7, 1901, weight 28,130 pounds; car shipped September 6, 1901, weight 25,000 pounds; car shipped November 27, 1901, weight 26,630 pounds, he was overcharged 2 cents per 100 pounds, making total overcharge of \$15.80, provided the weights are correct. This company offered to refund him such overcharge.

The through joint rates of 73 and 75 cents are lower than the

sum of the locals, and unless the joint through rate of 53 cents had been made to Woodward at the time stated there would have been no movement of beer to that point from Milwaukee. Alva is a point about 56 miles north from Woodward. Oklahoma City has a population of 30,000, Woodward 2,500 to 3,000. There is much greater traffic to Oklahoma City than to Woodward. In adjusting the joint through rates between Oklahoma City and Woodward this defendant, the Santa Fe, did not desire to discriminate unduly. The rate to Woodward is made without any reference to the distance to Chicago, and Woodward was treated as favorably in the way of rates as other points on the branch line upon which it is located. The statement of the complainant that Woodward was the only place where the rates of 73 and 75 cents were charged is not correct. While the rate of 75 cents per 100 pounds remained in effect at Woodward the rate at Alva was 72 cents, and while the 73-cent rate remained in force at Woodward the rate at Alva was 70 cents; and the rates to points beyond Woodward would be higher than to Woodward according to distance.

From the evidence presented and the records on file with the Commission showing the schedules of rates, the Commission finds the following facts:

That the defendants are common carriers, and that the complainant shipped over defendants' lines from Milwaukee, Wis., to Woodward, Okla., 13 carloads of beer between January 20, 1901, and March 4, 1902, and paid the freight charges thereon, amounting to $2,538.68, being 73 cents per hundredweight on 8 cars and 75 cents per hundredweight on 5 cars, while the schedule rates on file were 73 cents on 10 cars and 75 cents on three cars, making an overcharge of $15.80 on 2 of these cars. The schedules of rates on file with the Commission show the following rates on beer in carload lots from Milwaukee to Woodward:

October 1, 1892, 53 cents per 100 pounds and continued up to May 15, 1899;

May 15, 1899, 73 cents per 100 pounds;

June 4, 1899, 57 cents per 100 pounds;

October 17, 1899, 73 cents per 100 pounds,

which was continued up to December 15, 1901, when the rate was raised to 75 cents per 100 pounds, and on April 9, 1902, was reduced to 53 cents and so continued to date.

Alva is a station on the same Panhandle branch line, about 56 miles north of Woodward. The schedule of rates to Alva from Milwaukee was:

October 1, 1892, 53 cents per 100 pounds;
January 1, 1898, 53 cents per 100 pounds;
May 15, 1899, 70 cents per 100 pounds;
June 4, 1899, 57 cents per 100 pounds;
October 17, 1899, 70 cents per 100 pounds;
December 15, 1901, 72 cents per 100 pounds;
February 5, 1902, 53 cents per 100 pounds,

on which date the Chicago, Rock Island and Pacific established a rate of 53 cents to Alva, and both so continue to date.

At Alva there is competition. There is no railroad or water competition at the following stations on the Panhandle route, and the schedule of rates to such stations and their distance from Woodward show the following:

Gage is a station about 23 miles south of Woodward, and Goodwin is a station about 40 miles south of Woodward. The schedules of rates to these two stations were 73 cents January 1, 1898, to June 4, 1899, when they were reduced to 57 cents, and October 17, 1899, were increased to 73 cents, and so continued to December 15, 1901, when they were increased to 75 cents, and so remained to October 11, 1902, when they were reduced to 53 cents and have so continued to date.

Higgins is a station on the same line, 45 miles south of Woodward. The rate to Higgins, January 1, 1898, was 57 cents, and so remained continuously to December 15, 1902, when reduced to 55 cents, then increased to 61 cents March 15, 1903, and then reduced to 55 cents April 27, 1903.

Canadian is a station on the same line, about 70 miles south of Woodward, and Miami is another station, about 93 miles south of Woodward. The rates to these two stations were 58 cents January 1, 1898, to January 10, 1903.

Panhandle is a station on the same line, about 142 miles south of Woodward. The rate to this station was 60 cents from January 1, 1898, to December 15, 1902.

The Santa Fe reached Oklahoma City in the year 1887, and the Choctaw, Oklahoma and Gulf and the Chicago, Rock Island and Pacific reached Oklahoma City in 1892, and the St. Louis and San Francisco reached Oklahoma City November 14, 1898. The schedule of rates to Oklahoma City by the Santa Fe, October 1, 1892, was 76 cents, while by the same schedule the rate to Woodward was 53 cents. The Rock Island, October 15, 1892, had a rate of 76 cents to Oklahoma City. On January 19, 1893, the Santa Fe reduced the rates to Oklahoma City to 53 cents, and afterwards, on March 21, 1893, the Rock Island reduced its rates to 53 cents, and these rates continued to May 15, 1899, when both roads increased rates to 73 cents, and the Frisco joined in such rate; and on June 2, 1899, the Rock Island and the Frisco reduced their rates to 62 cents, and on June 4, two days thereafter, the Santa Fe reduced its rates to 55 cents, and on October 17, 1899, these three roads reduced the rates to 53 cents. The Santa Fe made the first reduction of rates to Oklahoma City, from 76 cents to 53 cents. Then on May 15, 1899, the three roads named established the 73-cent rate, and the Rock Island and the Frisco, June 2, reduced the rates to 62 cents. Then on June 4, the Santa Fe reduced it to 55 cents, and on October 17 all three reduced the rate to 53 cents, at which the rate has remained ever since.

The Commission further finds that the rates charged and paid by complainant of 73 and 75 cents per 100 pounds were unjust and unreasonable, and that 53 cents per 100 pounds on said shipments would have been a just and reasonable rate, and any greater charge unjust and unreasonable.

Conclusions.

The conclusions of the Commission are that the rates charged and complained of were unjust and unreasonable to the amount of $715.05, and that the complainant is entitled to reparation in the said sum of $715.05, and the defendants are hereby directed and required to pay said sum, with interest from March 25, 1904, the date of the filing of the complaint, to the complainant within thirty days from the date of the service of the order herein. An order will be issued accordingly.

United States District Court, Southern District of Ohio, Eastern Division.
No. 55.

UNITED STATES OF AMERICA
v.
PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY.

Filed December 18, 1905.

1. The car involved in this case was hauled from one of the defendant's yards to another, the movement being preparatory to going upon the main line toward destination in another State: *Held,* That this car was used in interstate commerce within the meaning of the act of March 2, 1893, as amended.
2. The safety appliance acts apply to cars while being used in a switching movement.

Statement of Facts.

This is an action begun by United States Attorney McPherson upon the direction of the Attorney General at the request of the Interstate Commerce Commission, in accordance with section 6 of the act of March 2, 1893, as amended, to recover a penalty of $100 for violation of that statute.

United States Safety Appliance Inspectors H. W. Belnap and J. J. Coutts on July 25, 1905, reported that the defendant on that date had accepted Kanawha & Michigan box car No. 852 from the Toledo & Ohio Central Railway Company, and hauled same over defendant's line in the city of Columbus from its Franklinton yard to its Twentieth street yard, with the grab iron opposite the uncoupling lever on the "B" end of the car,

missing; it was alleged that none had ever been applied. This car contained lumber destined to Wilkinsburg, in the State of Pennsylvania.

The principal facts are further set forth in the opinion of the court.

Sherman T. McPherson, United States Attorney for plaintiff.
W. O. Henderson, for defendant.

OPINION.

THOMPSON, *District Judge:*

This is an action brought to recover of the defendant the statutory penalty of $100 for the violation of section 4 of the act of Congress approved March 2, 1893, known as the safety appliance act, and the acts amendatory thereof, because of the use of a car in interstate commerce not provided with a grab iron on the "B" end thereof.

The parties having, by written stipulation, filed with the clerk, waived a jury, the cause was submitted to the court by agreement of the parties upon the facts stated in the report of Government Inspectors H. W. Belnap and James J. Coutts, made to the Interstate Commerce Commission, a copy of which was presented to the court by the parties and filed herein.

The contention of the defendant is that the car in question was not in use at the time of the alleged violation of said section 4. The statement of the inspectors in relation thereto is as follows: "This car was delivered to Penna. Co. by the T. & O. C. in this defective condition. Accepted by the Penna. Co., at their Franklinton yard and taken to the Twentieth street yard to be put in a train for movement east."

When it was moved from the Franklinton yard to the Twentieth street yard, to be put in a train for movement east, it was used in interstate commerce, within the meaning of the safety appliance act as interpreted by the Supreme Court in *Johnson* v. *Southern P. Co.,* 196 U. S. 1, 49 L. ed. 363, 25 Sup. Ct. Rep. 158, and there will be a finding and judgment in favor of the plaintiff as prayed in the petition.

United States District Court, Southern District of Illinois.

Nos. 10652 and 10653.

UNITED STATES OF AMERICA
v.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY OF ILLINOIS, AND LITCHFIELD AND MADISON RAILWAY COMPANY.

Decided January 19, 1906.

1. In an action brought jointly against two or more railroad companies to recover the statutory penalty specified in the safety appliance acts, judgment may be rendered against any one of the defendants when the proof shows that such defendant has violated that statute. *Chaffee* v. *United States*, 18 Wall. 518, 538, 21 L. ed. 908, 911.
2. When a railroad company hauls over its line a car having a defect covered by the safety appliance acts, it is liable for the penalty provided by said statute.

STATEMENT OF FACTS.

This is an action begun by the United States attorney upon the direction of the Attorney General at the request of the Interstate Commerce Commission, in accordance with section 6 of the act of March 2, 1893, as amended, to recover a penalty of $200 for violations of that statute.

Inspectors of safety appliances in the employ of the Interstate Commerce Commission reported that on December 14, 1904, two coal cars of the Litchfield and Madison Railway Company, loaded with coal, consigned to points in the State of Missouri, were hauled over the line of the Chicago, Peoria and St. Louis Railway Company of Illinois from Madison, in the

State of Illinois, to East St. Louis, in said State, and delivered to the Terminal Railroad Association in a defective condition. The defect on coal car 2734 was on the "B" end, the lock block being missing from the Kelso coupler thereof, the coupler thus being totally inoperative. The defect of coal car 2171 was on the "B" end thereof, a grab iron being broken off and missing from that end of the car. Prior to July 1, 1904, the Chicago, Peoria and St. Louis Railway Company of Illinois had operated the Litchfield and Madison Railway Company under a general lease, but on that date said lease was canceled.

There was an arrangement or agreement in effect on December 14, 1904, whereby the cars of the Litchfield and Madison Railway Company delivered at the Madison yard of said railway company were hauled by the Chicago, Peoria and St. Louis Railway Company of Illinois in its trains from Madison to East St. Louis, for which service the Litchfield and Madison Railway Company paid its share of maintenance of said line, based upon its share of the total wheelage, and 50 per cent of 5 per cent interest on the cost of said line. This line of the Chicago, Peoria and St. Louis Railway Company of Illinois from Madison to East St. Louis is about 3 miles in length.

The facts are further set forth in the opinion of the court.

W. A. Northcott, United States Attorney; *H. A. Converse,* Assistant United States Attorney; *L. M. Walter,* **Special Assistant** United States Attorney, for plaintiff.

Wilson, Warren & Child, for defendants.

OPINION.

SANBORN, *District Judge:*

In case No. 10,653 the amended declaration states that both defendants are corporations organized under the laws of Illinois, and on December 14, 1904, were common carriers engaged in interstate commerce by railroad, and operated jointly a line of railway in St. Clair County, Ill., and on that day hauled on their joint line of railway coal car No. 2171, marked L. & M., meaning Litchfield and Madison, which car was not provided with grab irons on one end, called the "B" end thereof,

that said car was then and there used in moving interstate traffic, being coal, from Staunton, Ill., to St. Louis, Mo., and not being a four-wheel car or an eight-wheel standard logging car. Judgment is demanded for $100 for said offense, the declaration being in debt.

In the other case against the same defendants the amended declaration states the same facts of joint operation and hauling on joint line of defendants' coal car No. 2734, having a defective uncoupling mechanism on the "B" end thereof, so faulty that in handling the car it could not be uncoupled without the necessity of a person going between the end thereof and the car to which it might be coupled; stating also the same interstate commerce haul and the same character of car. This action is in debt, and judgment is demanded for $100 against both defendants, as in the other case.

In each case defendants plead nil debet.

The act of Congress of March 2, 1893, provides that "it shall be unlawful for any such common carrier [engaged in interstate commerce by railroad] to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars." [27 Stat. at L. 531, chap. 196, § 2, U. S. Comp. Stat. 1901, p. 3194.]

Section 4 of the act provides that it shall be unlawful under like circumstances for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or hand-holds in the ends and sides of each car for greater security to men in coupling and uncoupling cars. It is under this act that the declarations were filed.

It appears in evidence that on December 14, 1904, the defendant, the Litchfield and Madison Railway Company, owned and operated a railroad from Litchfield, Ill., to Madison, Ill., some 3½ miles north of East St. Louis. At the same time it appears that the Chicago, Peoria and St. Louis Railway Company owned and operated a railroad from Pekin, Ill., to Granite City. The southern terminal of the latter road is a short distance from East St. Louis. The Chicago, Peoria and St. Louis Railway Company also owns a track from Madison to East St.

Louis, over which all freight cars destined for interstate commerce between the road of the Litchfield and Madison Company to points in Missouri are hauled by the Chicago, Peoria and St. Louis Railway Company.

The arriving southbound trains of the Litchfield and Madison road are taken by the Chicago, Peoria and St. Louis Railway, or by its engines, to East St. Louis, and there are delivered to the St. Louis Bridge and Terminal Company, which is an ordinary terminal railroad company between trunk lines operated across the St. Louis Bridge between East St. Louis, Ill., and St. Louis, Mo. It appears also that the Illinois Central Railroad Company uses the track of the Chicago, Peoria and St. Louis Railway Company between Madison and East St. Louis. This statement of facts applies to the date in question, December 14, 1904.

On the date just mentioned two 8-wheel coal cars were delivered by the Litchfield and Madison Company at Madison to the Chicago, Peoria and St. Louis Railway Company for hauling to East St. Louis, destined for delivery to the Terminal Company, and loaded with coal consigned to points in Missouri, and the cars were actually afterwards moved from Illinois to Missouri, pursuant to the terms of the bills of lading. One of these cars had a defective broken coupling, which would not work automatically or without going between the cars. On the other one the grab iron, which is a support some 24 inches long, fastened onto the end of the car, designed to aid the brakeman to loosen the knuckle of the coupling joint, had been broken or torn off, so as to leave only a small portion of one end of the iron remaining on the door. These cars were inspected by agents of the Interstate Commerce Commission at Madison and also at East St. Louis, and the Terminal Company thereupon repaired them on December 15, 1904, and then transported them into Missouri.

The only question presented is whether the defendants are jointly liable under the acts of Congress for hauling or permitting to be hauled or used on the line from Madison to East St. Louis these cars in the condition described. It clearly appears that the line upon which they were so hauled belonged entirely to the Chicago, Peoria and St. Louis Railway Com-

pany, and that the hauling was done entirely by that company, the Litchfield and Madison Company having nothing to do with the cars after they were stopped at Madison and delivered to the Chicago, Peoria and St. Louis Railway Company, as herein stated. Under the case of *Chaffee* v. *United States,* 18 Wall. 518, 538, 21 L. ed. 908, 911, I am of opinion that judgment can be rendered against both or either of the companies under these declarations. It also appears clearly that the Litchfield and Madison Company is not within the terms of the act in this particular case, because the haul shown was that of the other company alone, and that no judgment should be taken against it for the penalty provided, but that the plaintiffs should recover the prescribed penalty of $100 in each case, with costs, against the Chicago, Peoria and St. Louis Railway Company only. Judgment is ordered accordingly.

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ACTION.

A case before the Commission involving alleged discrimination in furnishing cars, and demanding reparation, is not barred, under section 9 of the Act, by the previous institution in the State court of a suit for damages between the same parties, based on such discrimination. *Gallogly* v. *Cincinnati, H. & D. R. Co.* 1.

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ADVANCES IN FREIGHT RATES.

1. Rates in force on freight articles from St. Louis, Mo., to Texas common points prior to March 15, 1903, afforded reasonable compensation to the carriers, and, as they had been in effect for a long period, and the material advances of such rates on that date were made through concerted action of the carriers, justification for the advances should be clearly shown; but this is a general investigation, in which no complainant is demanding relief from some particular rate, and no particular rates have been investigated, and it does appear, moreover, that the financial condition of the respondents—especially those operating in Texas,—

is not favorable. While impressed with the belief that these advances in rates are improper, the Commission does not feel warranted in making an order condemning such advances in this proceeding. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 238.

2. Statement showing advances in rates on cattle in carloads, from points in Texas, Indian and Oklahoma Territories, Kansas, Colorado, and New Mexico. *Cattle Raisers' Asso. of Texas* v. *Missouri, K. & T. R. Co.* 353.

3. Defendants' advances in live-stock rates during 1903, as shown in the appendix, were unjust and unreasonable, and the present rates are unjust and unreasonable to the extent of such advances. *Cattle Raisers' Asso. of Texas* v. *Missouri, K. & T. R. Co.* 296.

4. The advance in freight rates upon lumber from Dalton, Ga., to points in Virginia on the Norfolk and Western lines, between Bristol, Tenn., and Roanoke, Va., and between Bluefield, W. Va., and Kenova, W. Va., which were made in 1901 and 1903, are unreasonable and unjust, and the rates should not exceed those in force before the advances were made effective *Farrar* v. *Southern R. Co.* 640.

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CARLOADS.

1. While carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates, and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum. *Planters' Compress Co.* v. *Cleveland, C. C. & St. L. R. Co.* 382.

2. Defendant's refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the regulating statute. *Id.*

3. Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard; but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages his business from $20 to $100 per car. *Held*, that complainant is thereby subjected to undue prejudice. *Miner* v. *New York, N. H. & H. R. Co.* 422.

4. The application by defendants of uniform rates on cotton in any quantity, and their refusal to concede lower rates based upon car loadings, was not in violation of the regulating statute. *Planters' Compress Co.* v. *Missouri, K. & T. R. Co.* 606.

CARRIERS. Duties as to Refrigeration, see REFRIGERATOR CARS.

CARS.

1. Defendants' established charge of $1 per day for car demurrage, *held* upon the record to be just and reasonable. *T. M. Kehoe & Co.* v. *Charleston & W. C. R. Co.* 166.

2. During performance of transportation the car is, to every practical intent, the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or by lease. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads*, 129.

3. Defendant's refusal to furnish to complainants cars for interstate shipments of corn from Leipsic, Ohio, while it contemporaneously furnished to complainants' competitors cars for like shipments, was unlawful discrimination. *Gallogly* v. *Cincinnati, H. & D. R. Co.* 1.

4. A case before the Commission involving alleged discrimination in furnishing cars, and demanding reparation, is not barred, under section 9 of the Act, by the previous institution in the State court of a suit for damages between the same parties based on such discrimination. *Id.*

5. In September, October, and November, 1905, defendant unjustly discriminated, in furnishing cars for hay and grain shipments, against the complainant and in favor of other shippers, including the operators of an elevator. *Eaton* v. *Cincinnati, H. & D. R. Co.* 619.

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Artz v. *Seaboard Air Line Co.* 11 I. C. C. Rep. 458,—cited on p. 474.

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Brownell v. *Columbus & C. M. R. Co.* 5 I. C. C. Rep. 638,—cited on p. 410.

Butchers & Drovers Stock Yards Co. v. *Louisville & N. R. Co.* 14 C. C. A. 290, 31 U. S. App. 252, 67 Fed. 35,—cited on pp. 451, 454, 577.

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Re Class & Commodity Rates from St. Louis to Texas Common Points, 11 I. C. C. Rep. 238,—cited on pp. 286, 333, 345.

Re Export Trade of Boston, 1 I. C. C. Rep. 24, 1 Inters. Com. Rep. 25,—cited on p. 65.

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Rates on. *Charlotte Shippers' Asso.* v. *Southern R. Co.* 113, 114, 115.

COMMERCE.

A State has jurisdiction to enact that carriers of coal therein shall provide track connections with all mines within its borders, but the power of the State in that respect arises from its authority over State commerce, and does not constitute any limitation upon the exclusive power of Congress to regulate interstate commerce. *Red Rock Fuel Co.* v. *Baltimore & O. R. Co.* 438.

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CONNECTING CARRIERS. See also THROUGH RATES.

1. The carrier is not obliged to forward by a cheaper route where he follows the instruction given by the shipper, and an order in favor of the complaining shipper cannot be issued where the testimony does not indicate what instructions were actually given. *Dewey Bros. Co.* v. *Baltimore & O. R. Co.* 481.

2. Where a carrier, contrary to positive instructions from the shipper, routes a car by an indirect and expensive route, or, without any instruc-

tions, sends the car by the longer route so as to burden the shipper with needless expense, such action is prima facie unjust and unreasonable, and constitutes a fair basis for an order of reparation. *Id.*

3. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct, or support a charge of unjust discrimination. *St. Louis Hay & Grain Co.* v. *Illinois Cent. R. Co.* 486.

4. The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportion of through rates. *Id.*

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Defendants' established charge of $1 per day for car demurrage, *held* upon the record to be just and reasonable. ***T. M. Kehoe & Co.* v. *Charleston & W. C. R. Co.*** 166.

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DIFFERENTIALS. See RATES.

DISCRIMINATION.

1. An arrangement between a railway company, stage transportation company, and a hotel association under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the favored transportation company and hotel association, and subjects complainant, who operates a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. *Wylie* v. *Northern P. R. Co.* 145.

2. Defendant's refusal to furnish to complainants cars for interstate shipments of corn from Leipsic, Ohio, while it contemporaneously furnished to complainants' competitors cars for like shipments, was unlawful discrimination. *Gallogly* v. *Cincinnati, H. & D. R. Co.* 1.

3. A case before the Commission involving alleged discrimination in furnishing cars, and demanding reparation, is not barred under section 9 of the Act, by the previous institution in the State court of a suit for damages between the same parties, based on such discrimination. *Id.*

4. An unlawful discrimination is made by the charging of a given sum for rail transportation to Gardiner, Mont., and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accommodations therein, the service performed by the railway company being the same in each case. *Wylie* v. *Northern P. R. Co.* 145.

5. It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner, and elsewhere, to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. *Id.*

6. There is no such competitive relation between fresh meat and, for example, fresh fruit that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other. *Miner* v. *New York, N. H. & H. R. Co.* 422.

7. Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into

their warehouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard. but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages his business from $20 to $100 per car. *Held*, that complainant is thereby subjected to undue prejudice. *Id.*

8. Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations cannot be justified by the fact of long-standing agreements with favored mine operators and other shippers; nor is it a defense to the charge of discrimination that the facilities provided the favored persons may be withdrawn at the will of the one who grants them. *Red Rock Fuel Co.* v. *Baltimore & O. R. Co.* 438.

9. An unlawful discrimination is made between complainant and other more favored shippers, which amounts to undue and unreasonable preference by defendant of itself, where defendant declines to permit a sidetrack connection between its line and a switch or side track to complainant's coal mine in the Fairmont District of West Virginia, for the purpose of receiving interstate shipments of coal from its mine, while at the same time it provides and maintains side track connections for other mines in that district from which large quantities of coal are shipped to interstate destinations, and controls, through ownership of capital stock, large coal-mining enterprises in the Fairmont District. *Id.*

10. Although shippers cannot compel carriers to stop a commodity in transit for treatment or reconsignment, the carriers in granting such a privilege must not discriminate. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.

11. By railroads against steamboat line, in refusing to make a joint rate with it while making such joint rate with its competitor. *Re Alleged Unlawful Discrimination against the Enterprise Transp. Co.* 587.

In furnishing cars. *Eaton* v. *Cincinnati, H. & D. R. Co.* 619.

In side track connections. *Red Rock Fuel Co.* v. *Baltimore & O. R. Co.* 438.

Between industries. *Capital City Gas Co.* v. *Central Vermont R. Co.* 104.

Between places. *Dewey Bros. Co.* v. *Baltimore & O. R. Co.* 475.

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See also DIFFERENTIALS; heading *Discrimination between Places*, under title RATES.

Between commodities. *Miner* v. *New York, N. H. & H. R. Co.* 422.

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See also heading *Discrimination between Commodities*, under title, RATES.

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1. The safety appliance acts apply to cars while being used in a switching movement. *United States* v. *Pittsburgh, C. C. & St. L. R. Co.* (U. S. Dist. Ct. S. D. O.) 696.

2. In an action brought jointly against two or more railroad companies to recover the statutory penalty specified in the safety appliance acts, judgment may be rendered against any one of the defendants when the proof shows that such denfendant has violated the statutes. *United States* v. *Chicago, P. & St. L. R. Co.* (U. S. Dist. Ct. S. D. Ill.) 698.

3. When a railroad company hauls over its line a car having a defect covered by the safety appliance acts it is liable for the penalty provided by said statutes. *Id.*

DRILLS (COTTON CLOTH).

Rates on. *Kindel* v. *Boston & A. R. Co.* 499.

DUCK (COTTON CLOTH).

Rates on. *Kindel* v. *Boston & A. R. Co.* 499.

ELEVATORS.

In September, October, and November, 1905, defendant unjustly discriminated, in furnishing cars for hay and grain shipments, against the complainant and in favor of other shippers, including the operators of an elevator. *Eaton* v. *Cincinnati, H. & D. R. Co.* 619.

EXPORTS.

Table showing total value of all exports through the ports of Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 50.

Table showing exports of provisions through Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 47.

Table showing exports through Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 45.

Table showing exports from the ports of Montreal, Portland, Boston, New York, Philadelphia, Baltimore, Norfolk, Newport News, New Orleans, and Galveston from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 38.

Table showing exports through the ports of Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 31.

FACILITIES. See also CARS; REFRIGERATOR CARS.

1. Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that the respondent railroad companies, holding themslves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads*, 129.

2. Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard; but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages his business from $20 to $100 per car. *Held*, that complainant is thereby subjected to undue prejudice. *Miner* v. *New York, N. H. & H. R. Co.* 422.

3. Carriers must conduct and manage their business under the requirements and prohibitions of the regulating statute, and undue discriminations cannot be justified by the fact of long-standing agreements with favored mine operators and other shippers; nor is it a defense to the charge of discrimination that the facilities provided the favored persons may withdraw at the will of the one who grants them. *Red Rock Fuel Co.* v. *Baltimore & O. R. Co.* 438.

4. An unlawful discrimination is made between complainant and other more favored shippers, which amounts to undue and unreasonable preference by defendant of itself, where defendant declines to permit a side-track connection between its line and a switch or side track to complainant's coal mine in the Fairmont District of West Virginia, for the purpose of receiving interstate shipments of coal from its mine, while at the same time it provides and maintains side track connections for other mines in that district from which large quantities of coal are shipped to interstate destinations, and controls, through ownership of capital stock, large coal-mining enterprises in the Fairmont District. *Id.*

FLOUR.

Rates on *Charlotte Shippers' Asso.* v. *Southern R. Co.* 114, 115.

S. J. & S. Cannon v. *Mobile & O. R. Co.* 539.

J. W. Moran & Son v. *Missouri P. R. Co.* 598.

Davenport v. *Southern R. Co.* 650.

Table showing exports of flour through Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates to and from North Atlantic Ports*, 45.

FOREIGN CARS.

During performance of transportation the car is, to every practical intent, the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or by lease. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads*, 129.

FREIGHT YARDS.

1. There is no such competitive relation between fresh meat and, for example, fresh fruit, that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other. *Miner* v. *New York, N. H. & H. R. Co.* 422.

2. Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose store house is across the canal and about 300 feet from the railroad yard: but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages his business from $20 to $100 per car. *Held*, that complainant is thereby subjected to undue prejudice. *Id.*

GAS COAL.

Rates on. *City Gas Co.* v. *Baltimore & O. R. Co.* 371.

GRAIN.

Rates on. *Charlotte Shippers' Asso.* v. *Southern R. Co.* 114, 115.

Davenport v. *Southern R. Co.* 650.

Goodhue v. *Chicago Great Western R. Co.* 683.

Table showing exports of grain through the ports of Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 31.

Table showing receipts of grain at New York via canal and rail yearly from 1878 to 1903. *Re Differential Freight Rates To and From North Atlantic Ports*, 36.

Table showing exports of grain from the ports of Montreal, Portland, Boston, New York, Philadelphia, Baltimore, Norfolk, Newport News, New Orleans, and Galveston from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports*, 38.

GRAPES.

Refrigeration rates. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads*, 133.

HAY.

Rates on. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.
Davenport v. *Southern R. Co.* 650.
T. M. Kehoe & Co. v. *Evansville & T. H. R. Co.* 172.
Dewey Bros. Co. v. *Baltimore & O. R. Co.* 475.

HEARING.

Complainants allowed to apply for further hearing, where the evidence relating to damages was found to be unsatisfactory and inconclusive. *Gallogly* v. *Cincinnati, H. & D. R. Co.* 1.

HOGS.

Rates on. *Re Freight Rates between Memphis and Points in Arkansas,* 193, 194.

HORSES.

Rates on. *Re Freight Rates between Memphis and Points in Arkansas,* 193, 194.

HOTEL ACCOMMODATIONS.

1. It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner, and elsewhere, to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. *Wylie* v. *Northern P. R. Co.* 145.

2. An arrangement between a railway company, stage transportation company, and a hotel association, under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the transportation company and hotel association, and subjects the complainant, who operates a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. *Id.*

ICING. See REFRIGERATOR CARS.

IMPORTS.

Table showing total value of all imports through the ports of Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports,* 52.

INTERSTATE COMMERCE.

1. When a carload of hay destined to East St. Louis, Ill., is delivered by the carrier at a warehouse designated by the shipper or consignee prior to arrival in that city, or to the proper switching road, or is placed upon

the team track of the carrier if no specific delivery is named, the car has been properly delivered, and the carrier may insist that the consignee shall accept such delivery; and in case the consignee intercepts and sells the carload while upon a hold track, after arrival at East St. Louis but before such delivery, he thereby accepts delivery. If the consignee, instead of removing the hay from the car so delivered, sells it to complainant, and a carrier, upon an order of the original consignee or of complainant, moves the car to complainant's storehouse in East St. Louis, that is a new and independent service on reconsignment performed entirely within the state of Illinois, of which this Commission has no jurisdiction: but it is considered that Congress might, directly or through the Commission, require that shippers should be allowed a certain time after arrival in East St. Louis to designate the point of delivery for interstate shipments, and that such delivery be made accordingly. *St. Louis Hay & Grain Co.* v. *Chicago, B. & Q. R. Co.* 82.

2. It is not within the province of the Commission to prescribe the method or kind of refrigeration charges which shall be adopted by the carrier. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads*, 129.

3. The carriers having reduced their rates for refrigeration charges, and the Commission being without authority to fix rates for the future, an order will not be made at this time. *Id.*

4. Upon finding that the defendant's rates are in many instances unreasonably high, the defendant is required to submit within thirty days a revised schedule and put the same in force as provided by law; and the case is retained for such further order as may become necessary. *Re Freight Rates between Memphis and Points in Arkansas*, 180.

5. The respondents having removed the differential of 5 cents on corn meal, no order is considered necessary. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Louisiana*, 227.

6. This case, involving the reasonableness and justice of freight rates from Chicago, St. Louis, Louisville, and other Ohio River and Mississippi River points, is similar to, and was held to await the final disposition of, the case of *Wilmington Tariff Asso.* v. *Cincinnati, P. & V. R. Co.* 9 I. C. C. Rep. 118, in which proceeding the Commission entered an order requiring correction of rates from the same points to Wilmington, N. C.; but such order the United States circuit court declined to enforce. During the present year the rates from Chicago to Ohio River crossings have been materially reduced on shipments destined to southeastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington. *Held*, that in view of the decision of the circuit court in the *Wilmington Case*, no enforceable order of relief can be predicated upon the facts shown in this case, and the complaint must be dismissed. *Bureau of Freight & Transportation of Charleston, S. C.,* v. *Norfolk & W. R. Co.* 235.

7. The enactment by Congress, in section 3 of the Act to regulate commerce, that the carriers affected thereby shall not subject persons, localities, or descriptions of traffic to undue prejudice or unreasonable dis-

advantage, or give any undue or unreasonable preference or advantage to persons, localities, or kinds of traffic, in any respect whatsoever, applies to discrimination in facilities or instrumentalities of shipment or carriage: and while the Commission has no authority to order a carrier to put in sidetrack connections, or to prescribe the terms or conditions relating to the construction of such connections, its jurisdiction does extend to any case of wrongful prejudice resulting from discrimination in the provision of such facilities or instrumentalities of shipment or carriage, including side-track connections. *Red Rock Fuel Co. v. Baltimore & O. R. Co.* 438.

8. Complainants allowed to apply for further hearing, where the evidence relating to damages was found to be unsatisfactory and inconclusive. *Gallogly v. Cincinnati, H. & D. R. Co.* 1.

9. As Duluth, Minn., has the same coal rates to Hastings as to Superior, Wis., which latter rates are excessive, the railroad commission of Minnesota has ample authority to control the situation, and complainant should first apply to that commission. *Hastings Malting Co. v. Chicago, M. & St. P. R. Co.* 675.

10. It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, when considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of rates in effect, and in a case of this sort the Commission does not feel that it should interfere until strong reasons for such interference are presented. *Id.*

11. Case retained, with the expectation that the defendants will make a substantial readjustment of the rates in accordance with the views expressed in the opinion. *A. J. Phillips Co. v. Grand Trunk Western R. Co.* 659.

INTERSTATE TRAFFIC.

When a carload of hay destined to East St. Louis, Ill., is delivered by the carrier at a warehouse designated by the shipper or consignee prior to arrival in that city, or to the proper switching road, or is placed upon the team track of the carrier if no specific delivery is named, the car has been properly delivered, and the carrier may insist that the consignee shall accept such delivery; and in case the consignee intercepts and sells the carload while upon a hold track, after arrival at East St. Louis but before such delivery, he thereby accepts delivery. If the consignee, instead of removing the hay from the car so delivered, sells it to complainant, and a carrier, upon an order of the original consignee or of complainant, moves the car to complainant's storehouse in East St. Louis, that is a new and independent service on reconsignment performed entirely within the State of Illinois, of which this Commission has no jurisdiction; but it is considered that Congress might, directly or through the Commission, require that shippers should be allowed a certain time after arrival in East St. Louis to designate the point of delivery for interstate

shipments, and that such delivery be made accordingly. *St. Louis Hay & Grain Co.* v. *Chicago, B. & Q. R. Co.* 82.

JOINT RATES.
See heading *Through Rates* under Title RATES.

LEATHER SCRAPS.
Classification of. *Newman* v. *New York C. & H. R. R. Co.* 517.

LIVE STOCK.
Rates on. *Cattle Raisers' Asso. of Texas* v. *Missouri, K. & T. R. Co.* 296.
Re Freight Rates between Memphis and Points in Arkansas, 180.
Cattle Raisers' Asso. of Texas v. *Missouri, K. & T. R. Co.* 296.

LIVE STOCK DEPOT.
A railroad company may maintain its live-stock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition, the depot of defendants, is immaterial, for they were, and still are, in fact, the point to which the stock is transported and unloaded under the shipping contract of defendants. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

LONG AND SHORT HAUL PROVISION.
See also heading *Long and Short Haul* under the Title RATES.
Charlotte Shippers' Asso. v. *Southern R. Co.* 108.
Farrar v. *Southern R. Co.* 640.
Goodhue v. *Chicago Great Western R. Co.* 683.
Hastings Malting Co. v. *Chicago, M. & St. P. R. Co.* 675.

LUMBER.
Rates on. *George M. Spiegle & Co.* v. *Chesapeake & Ohio R. Co.* 367.
Farrar v. *Southern R. Co.* 632, 640.

MILLING-IN-TRANSIT.
The milling-in-transit rate of 42 cents between Little Rock and Hope on interstate shipments of flour was grossly unreasonable; the rate of 19 cents was, and the rate of 20 cents is, also unreasonable and unjust; a reasonable and just rate therefor would be 11 cents per hundred pounds. *J. W. Moran & Son* v. *Missouri P. R. Co.* 598.

MOLASSES.
Rates on. *Charlotte Shippers' Association* v. *Southern R. Co.* 113, 114. 115.

MULES.

Rates on. *Re Freight Rates between Memphis and Points in Arkansas,* 193, 194.

OAK LUMBER.

Rates on. *George M. Spiegle & Co.* v. *Chesapeake & O. R. Co.* 367.

OATS.

Table showing exports of oats through the ports of Boston, New York, Philadelphia, and Baltimore from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports,* 31.

Table showing exports of oats from the ports of Montreal, Portland, Boston, New York, Philadelphia, Baltimore, Norfolk, Newport News, New Orleans, and Galveston from 1878 to 1904. *Re Differential Freight Rates To and From North Atlantic Ports,* 38.

OIL. See also PETROLEUM.

Rates on. *Fred G. Clark Co.* v. *Lake Shore & M. S. R. Co.* 558.

PACKING HOUSE PRODUCTS.

Rates on. *Davenport* v. *Southern R. Co.* 650.

PASSENGER FARES.

1. Under the circumstances of the case the passenger fare in question cannot be deemed excessive. *Artz* v. *Seaboard Air Line Railway,* 458.

2. Ordinarily the through interstate passenger fare should not exceed the sum of local fares, but there is no specific requirement in the regulating statute to that effect, and the only question for determination is whether the fare complained of is unreasonable. *Id.*

3. The rates fixed by the State Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive, and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic. *Brabham* v. *Atlantic Coast Line R. Co.* 464.

4. A railroad company is entitled to a fair return upon the value of that which it employs for the public convenience; and in view of all the facts in this case, and previous decisions of the Commission cited, it is not apparent that the interstate passenger rates complained of are unreasonable. *Id.*

PASSENGERS.

1. An arrangement between a railway company, stage transportation company, and a hotel association, under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the transportation company and hotel association, and subjects the complainant, who operates

a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. *Wylie* v. *Northern P. R. Co.* 145.

2. It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner, and elsewhere, to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. *Id.*

PEACHES.

Refrigeration rates. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads,* 133.

PETROLEUM.

Rates on. *Fred G. Clark Co.* v. *Lake Shore & M. S. R. Co.* 558.

1. There is no competitive relation between petroleum and its products on the one hand, and other articles of traffic on the other; and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. *Fred G. Clark Co.* v. *Lake Shore & M. S. R. Co.* 558.

2. The Act to regulate commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable, and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief cannot be afforded by the Commission, and the complaint must be dismissed. *Id.*

POTATOES.

Rates on. *Charlotte Shippers' Asso.* v. *Southern R. Co.* 113, 114, 115.
Hoerr v. *Chicago, M. & St. P. R. Co.* 547.

PREFERENCE. See also DISCRIMINATION.

Defendant's tracks in Providence, R. I., are so located that competitors of complainant occupying places of business abutting on its Canal Street Yard are able to unload carloads of fresh meat directly into their warehouses; and the privilege of unloading meat in that yard was formerly accorded to complainant, whose storehouse is across the canal and about 300 feet from the railroad yard; but such privilege to complainant was recently withdrawn. Denial of such privilege entails the hauling of complainant's meat from another yard about half a mile distant, and damages his business from $20 to $100 per car. *Held,* that complainant is thereby subjected to undue prejudice. *Miner* v. *New York, N. H. & H. R. Co.* 422.

RAILROAD COMMISSIONS.

The rates fixed by the State Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive, and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic. *Brabham* v. *Atlantic Coast Line R. Co.* 464.

RAILROADS.

Discrimination in favor of, in fixing rate on coal. *Capital City Gas Co.* v. *Central Vermont R. Co.* 104.

RAILS.

Rates on. *Re Class & Commodity Rates from St. Louis to Texas Common Points,* 242.

RATES. Advance in, see ADVANCE IN FREIGHT RATES.

Classification of, see SCHEDULES OR TARIFFS.

1. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct, or support a charge of unjust discrimination. *St. Louis Hay & Grain Co.* v. *Illinois Cent. R. Co.* 486.

2. An unlawful discrimination is made by the charging of a given sum for rail transportation to Gardiner, Mont., and return only, and the acceptance of a smaller sum for the rail transportation when the passenger goes by stage to points in or through Yellowstone Park, with or without hotel accommodations therein, the service performed by the railway company being the same in each case. *Wylie* v. *Northern P. R. Co.* 145.

3. In allowing the privilege of reconsigning hay from East St. Louis to southern destinations, the defendants are entitled to charge for such privilege what it actually costs them. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.

THROUGH RATES.

4. An arrangement between a railway company, stage transportation company, and a hotel association, under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the transportation company and hotel association, and subjects complainant, who operates a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. *Wylie* v. *Northern P. R. Co.* 145.

CARLOAD RATES.

5. Defendant's refusal to grant lower rates on cotton in carloads of 45,000 pounds or more is not a violation of the regulating statute. *Planters' Compress Co.* v. *Cleveland, C. C. & St. L. R. Co.* 382.

6. The application by defendants of uniform rates on cotton in any quantity and their refusal to concede lower rates based upon car loadings,

was not in violation of the regulating statute. *Planters' Compress Co.* v. *Missouri, K & T. R. Co.* 606.

7. While carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates, and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum. *Planters' Compress Co.* v. *Cleveland, C. C. & St. L. R. Co.* 382.

DEMURRAGE.

8. Defendants' established charge of $1 per day for car demurrage, *held* upon the record to be just and reasonable. *T. M. Kehoe & Co.* v. *Charleston & W. C. R. Co.* 166.

WATER COMPETITION.

9. The rail lines centering in New York and running westerly therefrom refuse, for stated business reasons, to make any joint rating arrangement with the Enterprise Transportation Company, a steamboat line plying between Fall River and other New England points and New York city, and in competition with the Fall River line of the New England Navigation Company, which is owned and operated by the New York, New Haven, and Hartford Railroad Company. The Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and, upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public and its existence may depend upon its right to engage in through business. By reason of want of power to grant any relief, the Commission expresses no opinion as to whether the through routing arrangement should be extended to the Enterprise Company; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail and water carriers. *Re Alleged Unlawful Discrimination against the Enterprise Transp. Co.* 587.

10. Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense the measure of the value of the services; but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. *Kindel* v. *Boston & A. R. Co.* 495.

ON PETROLEUM.

11. The Act to regulate commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust

and unreasonable, and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief cannot be afforded by the Commission, and the complaint must be dismissed. *Fred G. Clark Co.* v. *Lake Shore & M. S. R. Co.* 558.

12. There is no competitive relation between petroleum and its products on the one hand, and other articles of traffic on the other; and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. *Id.*

TRACKAGE CHARGE.

13. The trackage charge to be paid by defendants to the stock yards company in Chicago is fairly established at $1 per car. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

DIFFERENTIALS.

14. The exaction of first-class rates on cotton-piece goods between Missouri River points and Denver, in view of the long-prevailing differentials in other parts of the country, and other existing conditions, is unjust and unreasonable. *Kindel* v. *Boston & A. R. Co.* 495.

15. It was contended by New York and Boston that the differentials favoring Baltimore and Philadelphia on freight articles from the west to Baltimore, Philadelphia, and Boston should be abolished. The differentials below or above the rates to New York are as follows: Export traffic 3 cents less to Baltimore and 2 cents less to Philadelphia, except on grain, iron, and steel articles, which are 1½ cents less to Baltimore and 1 cent less to Philadelphia, with the same rates to Boston as to New York on this traffic. On ex-lake grain received at Buffalo, Fairport, and Erie, there is, pending the disposition of this case, a differential in favor of Baltimore of 4-10 of a cent per bushel below the New York rate, but no differential in favor of Philadelphia. *Held:* That the differential per 100 pounds on flour, all-rail and lake and rail, should be reduced to 2 cents at Baltimore and 1 cent at Philadelphia, and that the existing differential on ex-lake grain should be reduced to 3-10 of a cent per bushel and be allowed both to Baltimore and Philadelphia; that otherwise the present export differentials should remain in force. *Re Differential Freight Rates To and From North Atlantic Ports*, 13.

16. The respondents having removed the differential of 5 cents on corn meal, no order is considered necessary. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Louisiana*, 227.

17. The differential on corn meal shipped from Missouri River points to points in Texas should not be more than 3 cents above the rate on corn in force between the same points. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Texas*, 220.

18. The present charges on corn products and corn from Missouri River points to the Pacific Coast terminals constitute undue, unreasonable, and unlawful discrimination against corn products and producers thereof at

places on the Missouri River, to the extent that such rate on corn products is more than 5 cents above the rate on corn. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon, and California*, 212.

19. While carriers may lawfully establish carload and less than carload rates on cotton, with a reasonable difference between the two rates, and a reasonable carload minimum securing to shippers generally the lower carload rates, it does not follow that they are bound to do so, much less that they can be required to establish a differential based upon an unusual carload minimum. *Planters' Compress Co.* v. *Cleveland, C. C. & St. L. R. Co.* 382.

DISCRIMINATION BETWEEN COMMODITIES.

20. The respondents having removed the differential of 5 cents on corn meal, no order is considered necessary. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Louisiana*, 227.

21. The differential on corn meal shipped from Missouri River points to points in Texas should not be more than 3 cents above the rate on corn in force between the same points. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Texas*, 220.

22. The present charges on corn products and corn from Missouri River points to the Pacific Coast terminals constitute undue, unreasonable, and unlawful discrimination against corn products and producers thereof at places on the Missouri River, to the extent that such rate on corn products is more than 5 cents above the rate on corn. In the Matter of *Re Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon, and California*, 212.

23. While there is much reason to believe that sectional bookcases might properly be placed in the first class by the Official Classification Committee, the same as has been done by the Southern and Western Classification Committees, it does not follow, however, that the classification fixed by the Committee, of one and one half times first class rates for all bookcases, is an unlawful discrimination against the sectional varieties. *Globe-Wernicke Co.* v. *Baltimore & O. S. W. R. Co.* 156.

23a. It appears that defendant's rates on woodenware are higher from Menasha, Wis., to north Pacific coast terminal points than from such Pacific coast terminals to Missouri River and Mississippi River points and to Chicago common points, including Menasha. Upon complaint that such rate adjustment results in unreasonable rates from Menasha and undue preference to Pacific coast woodenware shipments, *Held:* (1) That there is no sufficient basis in the record for a conclusion that the rates involved are unreasonably excessive; (2) that existing disparities in the rates eastbound and westbound on the traffic in question constitute undue discrimination against complainant, but this record furnishes no sufficient basis for such specific order respecting the exact adjustment of the rates on the different articles involved as would fulfil the requirements of the law as to justice and equality; and (3) that no order will be made at this time, but

it is expected that defendants will so readjust the rates as to remove the undue discrimination. *Menasha Wooden Ware Co.* v. *Atchison, T. & S. F. R. Co.* 666.

DISCRIMINATION AGAINST PLACES.

24. Under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case; and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect. *Griffin Grocery Co.* v. *Southern R. Co.* 522.

25. In the adjustment of rates as between places on its line, a carrie cannot rightfully ignore the relative cost of the respective services; but there are other matters equal in importance to that of the cost of service, and often more controlling, which must also be considered; and this includes competition of carriers and competition of markets. *S. J. & S. Cannon* v. *Mobile & O. R. Co.* 537.

26. The exaction of first-class rates on cotton-piece goods between Missouri River points and Denver, in view of the long-prevailing differentials in other parts of the country, and other existing conditions, is unjust and unreasonable. *Kindel* v. *Boston & A. R. Co.* 495.

27. The circumstances and conditions governing hay traffic from Columbus and Pataskala, O., appear to have been substantially dissimilar at a time when a lower rate from Columbus than from Pataskala to Greenville and Wilmington was in force; and complainant's demand for reparation based upon the rate then in force from Columbus is not sustained. *Dewey Bros. Co.* v. *Baltimore & O. R. Co.* 475.

28. A difference in charge by defendant on coal carried from Pennsylvania mines to Baltimore for local consumption, and on coal carried to its Curtis Bay or Locust Point docks in Baltimore, is based upon dissimilar circumstances and conditions, and is not unlawful. *City Gas Co.* v. *Baltimore & O. R. Co.* 371.

29. On complaint that defendants' rates on oak lumber in carloads to Philadelphia are unlawfully higher from Afton, Va., and points east thereof, to and including Gordonsville, Va., than those for the longer distances over the same line from Staunton and Basic City, Va., it appeared that a rate of 14 cents per hundred pounds applied over the whole territory for a period of about nine years between November 1, 1892, and August 1, 1901. Effective competition was shown by defendants' witnesses at Basic City and Staunton, and complainants failed to offer any testimony. Upon the record as made in this case, *Held:* That the higher rate from the Afton-Gordonsville group does not constitute unlawful discrimination. *George M. Spiegle & Co.* v. *Chesapeake & O. R. Co.* 367.

30. Defendant transports coal from Pennsylvania mines to Baltimore, which may be carried from Baltimore by water to Norfolk and to various other points on Chesapeake Bay, termed in its tariffs "points inside the

Capes." The rate to Baltimore on coal reshipped by water to "inside the Capes points" is materially less than its rate to Baltimore on coal reshipped by water to Norfolk. *Held*, that this constitutes wrongful prejudice and unjust discrimination, and that while defendant continues to give a rate less than its local to Baltimore on coal destined to "inside the Capes points," it cannot lawfully deny the same rate on coal forwarded by water from Baltimore to Norfolk. *City Gas Co.* v. *Baltimore & O. R. Co.* 371.

31. Defendant's rates from Memphis to points in Arkansas as compared with the Arkansas Commission mileage rates, including those applying from Little Rock and Pine Bluff, Arkansas, constitute a discrimination for which it is doubtful whether defendant can be held responsible. *Re Freight Rates between Memphis and Points in Arkansas*, 180.

32. Defendant's rates from local points in Arkansas to Memphis on traffic other than cotton are not disturbed, but defendant is recommended to consider revision of its rates to Memphis on live stock and cotton seed. *Id.*

33. The uncompressed cotton rates from points north of Fair Oaks favor Memphis by 5 cents per hundred pounds, as against Cairo or St. Louis. The rates on compressed cotton to Boston from Cairo and St. Louis place Memphis at a disadvantage of 3 cents in the Boston market as compared with St. Louis, and 1 cent as compared with Cairo. *Held*, that, considering the relative distances from most points north of Fair Oaks to Cairo especially, if not to St. Louis, the difference of 5 cents in favor of Memphis from the originating stations in Arkansas is perhaps not unjust. *Id.*

34. Defendant's rates on cotton from local points in Arkansas to Memphis are not required to be reduced, but it is directed that the relation of cotton rates from such points to Memphis and St. Louis be made more uniform from particular stations. *Id.*

DISCRIMINATION BETWEEN SHIPPERS.

34a. Upon the evidence as presented, it does not appear that the rate of 62 cents per hundred pounds on "wool in the grease" from Philadelphia, Pa., to Ft. Wayne, Ind., is unjust in comparison with the rate, on the same commodity, of 43 cents east bound from Ft. Wayne to Philadelphia. *Weil* v. *Pennsylvania R. Co.* 627.

34b. The rate on pine lumber from southern Georgia points to Chattanooga, Tenn., is 2 cents per one hundred pounds higher than to Dalton, Ga.; but on shipments to Cincinnati, Ohio, Chattanooga takes a 2-cent lower rate than Dalton. There is also a dressing-in-transit privilege at Dalton, for which 2 cents per one hundred pounds additional are charged. The lumber shipped out of Chattanooga is mostly hard wood; the southern pine lumber brought to that point being practically consumed there. *Held:* That under all the circumstances the lumber rate from Dalton to Cincinnati is not so discriminative or exorbitant as to justify disturbance at this time. *Farrar* v. *Southern R. Co.* 632.

34c. The reasons existing for lower lumber rates from the southern pineries do not apply to the reshipment of dressed lumber from Dalton. *Id.*

34d. Cleveland and Charleston, Tenn., take the Chattanooga rate on lumber to Cincinnati, but the conditions at these points are not the same as at Dalton, and no wrongful discrimination results from the existing adjustment of rates. *Farrar* v. *Southern R. Co.* 632.

34e. Upon complaint that defendants charge higher rates on canned goods, grain, flour, hay, and packing-house products from Cincinnati, Ohio, and Memphis, Tenn., to Helena and McRae, Ga., than to Cordele and Fitzgerald, Ga., towns in the section of country surrounding Helena and McRae.—*Held:* That the situation of Helena and McRae is not so similar to that of Cordele as to require the application of Cordele rates to the first-named places, but that the rates in question to Helena and McRae should not exceed those now in effect to Fitzgerald. *Davenport* v. *Southern R. Co.* 650.

34f. In unjust discrimination cases, the difference in cost of manufacture to the competing shippers offers no ground, of itself, to the carriers or to the Commission for adjustment of rates. *A. J. Phillips Co.* v. *Grand Trunk Western R. Co.* 659.

34g. Case retained with the expectation that the defendants will make a substantial readjustment of the rates in accordance with the views expressed in the opinion. *Id.*

34h. Upon complaint that the rates on wire-screen doors and windows eastbound from Fenton, Mich., a place near Detroit, to Winooski, Vt., and certain other eastern points, are higher than the rates on such articles westbound from Winooski to Detroit and certain other western points, and result in unreasonable rates and unjust discrimination against such eastbound shipments,—*Held:* That somewhat lower rates on westbound than on eastbound traffic seem, from the difference in conditions, to be justified; but no satisfactory reason appears why there should be a greater disparity between the rates on the traffic in question eastbound and westbound than that which prevails on articles of substantially the same character in the classes. *Id.*

34i. It appears that defendant's rates on woodenware are higher from Menasha, Wis., to north Pacific coast terminal points than from such Pacific coast terminals to Missouri River and Mississippi River points and to Chicago common points, including Menasha. Upon complaint that such rate adjustment results in unreasonable rates from Menasha and undue preference to Pacific coast woodenware shipments,—*Held:* (1) That there is no sufficient basis in the record for a conclusion that the rates involved are unreasonably excessive; (2) that existing disparities in the rates eastbound and westbound on the traffic in question constitute undue discrimination against complainant, but this record furnishes no sufficient basis for such specific order respecting the exact adjustment of the rates on the different articles involved as would fulfil the requirements of the law as to justice and equality; and (3) that no order will be made at this time, but it is expected that defendants will so readjust the rates as to

remove the undue discrimination. *Menasha Wooden Ware Co.* v. *Atchison, T. & S. F. R. Co.* 666.

34j. The competitive conditions existing at Afton, Minn., prevent the maintenance of higher coal rates than those now in effect, and consequently there is no unjust discrimination between places by reason of the fact that defendant's rate on coal is 35 cents per ton less from Superior, Wis., to Afton than from Superior to Hastings, although the traffic to Afton passes through Hastings. *Hastings Malting Co.* v. *Chicago, M. & St. P. R. Co.* 675.

34k. Substantial dissimilarity of circumstances and conditions exists between Goodhue and Red Wing, Minn., and consequently no undue discrimination arises out of the fact that the defendant charges a rate on grain of 15 cents per one hundred pounds from Goodhue, Minn., to Chicago, Ill., while it charges only 12½ cents per one hundred pounds from Red Wing, Minn., to Chicago, 14 miles farther off, the traffic passing through Goodhue. *Goodhue* v. *Chicago Great Western R. Co.* 683.

35. Defendants' joint rate of 90 cents per ton on bituminous coal from Norwood, N. Y., to Montpelier, Vt., when intended for "railroad supply," and their combination rate of $1.85 per ton, applied on such coal carried between the same points and used for manufacturing or any other industrial or domestic use, constitute unlawful discrimination. *Capital City Gas Co.* v. *Central Vermont R. Co.* 104.

36. The phrase "under substantially similar circumstances and conditions," in section 2 of the Act to regulate commerce, refers to the matter of carriage, and it is not permissible, under that section, for two or more carriers to establish a joint through rate less than the sum of their locals, which is applicable only to a particular shipper or class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination. *Id.*

37. Although shippers cannot compel carriers to stop a commodity in transit for treatment or reconsignment, the carriers in granting such a privilege must not discriminate. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.

LONG AND SHORT HAUL.

38. Under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case; and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect. *Griffin Grocery Co.* v. *Southern R. Co.* 522.

39. On complaint that defendants' rates on oak lumber in carloads to Philadelphia are unlawfully higher from Afton, Va., and points east thereof, to and including Gordonsville, Va., than those for the longer distances over the same line from Staunton and Basic City, Va., it ap-

peared that a rate of 14 cents per hundred pounds applied over the whole territory for a period of about nine years between November 1, 1892, and August 1, 1901. Effective competition was shown by defendants' witnesses at Basic City and Staunton, and complainants failed to offer any testimony. Upon the record as made in this case, *Held*, That the higher rate from the Afton-Gordonsville group does not constitute unlawful discrimination. *George M. Spiegle & Co.* v. *Chesapeake & O. R. Co.* 367.

40. Defendants' rate of $1.30 per hundred pounds on buggies in carloads from Rock Hill, S. C., To Tallahassee, Fla., is not shown to be unreasonable, and under the construction placed upon section 4, or the long and short haul clause of the statute, by the United States Supreme Court, competition by the A. C. L. R. Co. justifies defendants' lower rate of $1.10 for the longer distance to Quincy, Fla. *Rock Hill Buggy Co.* v. *Southern R. Co.* 229.

41. Freight rates to Charlotte, N. C., from New York and other northern and eastern points, and from Louisville, Chicago, and other western points, are complained of as unjust, and those from the west as greater for the shorter distance to Charlotte than for longer distances through Charlotte to more distant localities. The rates to Charlotte are made by combining rates to Virginia cities with the local rates from those cities to Charlotte. Competition forces low rates to the Virginia cities, and also compels the low rates in force from the west to certain points east of Charlotte. If through rates to Charlotte lower than the combination of charges to and from the Virginia cities were established, the disadvantage now resulting to Charlotte dealers in their competition with dealers at Virginia cities would to that extent be removed, and the carriers are recommended to consider taking such action; but unless the present through charges are unreasonable the Commission is without authority to require discontinuance of the charges now exacted. *Held*, That the facts presented do not constitute a basis for an order of relief which could be enforced, and therefore the complaints must be dismissed. *Charlotte Shippers' Asso.* v. *Southern R. Co.* 108.

41a. In view of the judicial interpretations of the Act to regulate commerce, the facts in this case furnish no basis for a conclusion that the rates in question violate the long and short haul clause on the ground that the rates to intermediate places are higher than for the longer distance from Dalton, Ga., to Roanoke or Lynchburg. *Farrar* v. *Southern R. Co.* 640.

41b. The competitive conditions existing at Afton, Minn., prevent the maintenance of higher coal rates than those now in effect, and consequently there is no unjust discrimination between places by reason of the fact that defendant's rate on coal is 35 cents per ton less from Superior, Wis., to Afton than from Superior to Hastings, although the traffic to Afton passes through Hastings. *Hastings Malting Co.* v. *Chicago, M. & St. P. R. Co.* 675.

41c. Substantial dissimilarity of circumstances and conditions exists between Goodhue and Red Wing, Minn., and consequently the 4th section of

the Act to regulate commerce is not violated by the defendant in charging a rate on grain of 15 cents per one hundred pounds from Goodhue, Minn., to Chicago, Ill., while it charges only 12½ cents per one hundred pounds from Red Wing, Minn., to Chicago, 14 miles farther off. *Goodhue* v. *Chicago Great Western R. Co.* 683.

PASSENGER FARES.

42. A railroad company is entitled to a fair return upon the value of that which it employs for the public convenience; and in view of all the facts in this case, and previous decisions of the Commission cited, it is not apparent that the interstate passenger rates complained of are unreasonable. *Brabham* v. *Atlantic Coast Line R. Co.* 464.

43. The rates fixed by the State Commissions of South Carolina and Georgia are presumptively reasonable, but such presumption is not conclusive, and the railroad companies are entitled to show the contrary in a case involving the rates on interstate traffic. *Id.*

44. Ordinarily the through interstate passenger fare should not exceed the sum of local fares, but there is no specific requirement in the regulating statute to that effect, and the only question for determination is whether the fare complained of is unreasonable. *Artz* v. *Seaboard Air Line Railway*, 458.

45. Under the circumstances of the case the passenger fare in question cannot be deemed excessive. *Id.*

REASONABLENESS OF.

46. The milling-in-transit rate of 42 cents between Little Rock and Hope on interstate shipments of flour was grossly unreasonable; the rate of 19 cents was, and the rate of 20 cents is, also unreasonable and unjust; a reasonable and just rate therefor would be 11 cents per hundred pounds. *J. W. Moran & Son* v. *Missouri P. R. Co.* 598.

47. If the rate on an article is reasonable to those who ship the great bulk of that article in the form in which it is commonly prepared for transportation, that rate does not become unreasonable to the shipper of a small quantity of the same article merely because he chooses to prepare his shipments in a form which affords the carrier a greater profit per hundred pounds, particularly when the preparation of that article in the more profitable form would impose some degree of hardship upon a large majority of shippers because of its greater expense or for other reasons. *Planters' Compress Co.* v. *Cleveland, C. C. & St. L. R. Co.* 382.

48. There are two routes over which coal may be shipped from the Thacker District, in West Virginia, to Alexandria, Ind.; one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N. & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., eight carloads of coal from the Thacker District, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and

later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. *Held*, that the rate charged is not shown to have been unreasonable, and that, in view of their published tariff, the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line. *J. J. Marley & Son* v. *Norfolk & W. R. Co.* 616.

49. Whether the rate on a second-hand dynamo shipped from the electric light station to the repair shop should be lower than is charged upon either a new or second-hand dynamo sent to the station for use, is a question of policy for the railways; and this Commission cannot say that it is unjust or unreasonable to exact the same charge for the new and the second-hand dynamo. *National Machinery & Wrecking Co.* v. *Pittsburg, C. C. & St. L. R. Co.* 581.

50. The defendant's rates on potatoes in carloads from Mankato and Good Thunder to Washington, Scranton, and other eastern destinations are unreasonable and unjust, and the St. Paul rate may be used, for the purposes of this case, as a standard of comparison. *Hoerr* v. *Chicago, M. & St. P. R. Co.* 547.

51. Reasonable and just rates on potatoes in carloads from Mankato and Good Thunder to Washington and Scranton would be 39 cents to Scranton and 38 cents to Washington, and said rates would be 4 cents above the rates from St. Paul; and defendant is also recommended to put in corresponding rates from Mankato and Good Thunder to the various eastern destinations. *Id.*

52. Rates on flour from Louisville and Evansville by the Southern Railway to Berry, Ala., on the line of the Southern, and by the Southern and Mobile & Ohio to Gordo, Ala., on the line of the Mobile & Ohio, are less than those of the Mobile & Ohio from Ava and Cairo, Ill., to Gordo. The rate by the Southern from St. Louis to Gordo is the same as that of the Mobile & Ohio from St. Louis and Ava, although the distance by the former is about twice that from Ava by the latter, and much greater than that from St. Louis by the Mobile & Ohio. *Held*, that these facts do not warrant the conclusion that the flour rates from St. Louis, Ava, and Cairo to Gordo are unreasonable. *S. J. & S. Cannon* v. *Mobile & O. R. Co.* 537.

53. It is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate, and these are to be considered in connection with the many other factors that enter into the adjustment of rates: but it does not necessarily follow that a rate is unreasonable because on the same or another road a particular kind of traffic is hauled a greater distance from a different point of origin at the same or at a less rate. *Id.*

54. The exaction of first-class rates on cotton-piece goods between Missouri River points and Denver, in view of the long-prevailing differen-

tials in other parts of the country, and other existing conditions, is unjust and unreasonable. *Kindel* v. *Boston & A. R. Co.* 495.

55. The result of the excessive rate on cotton-piece goods between the Missouri River and Denver, and the application of full locals in making up the through combination rate to New York, Boston, and other eastern points taking the same rate to Denver, is to make the through rate to Denver excessive; and such through rate to Denver, to be reasonable, should not exceed $1.50 per hundred pounds. *Id.*

56. A railroad company is entitled to a fair return upon the value of that which it employs for the public convenience; and in view of all the facts in this case, and previous decisions of the Commission cited, it is not apparent that the interstate passenger rates complained of are unreasonable. *Brabham* v. *Atlantic Coast Line R. Co.* 464.

57. The present terminal charge for delivery of live stock at the Union Stock Yards in Chicago, amounting to about $2 per car is unjust and unreasonable; and a reasonable charge would be $1 per car for such terminal services. *Cattle Raisers' Asso. of Texas* v. *Missouri, K. & T. R. Co.* 296.

58. Defendants' advances in live-stock rates during 1903, as shown in the appendix, were unjust and unreasonable, and the present rates are unjust and unreasonable to the extent of such advances. *Id.*

59. Outside the excluded territory a terminal charge for delivery to the Union Stock Yards in Chicago of $1 per car is reasonable. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

60. Excluding the territory covered by the reduction of 1896, live-stock rates to Chicago participated in by defendants were, on May 31, 1894, reasonable compensation for the services performed, including delivery at the Union Stock Yards in Chicago. At all times since that date such rates have been, and now are, sufficiently high to include a delivery at the stock yards as such delivery was made prior to June 1, 1894. *Id.*

61. This case, involving the reasonableness and justice of freight rates from Chicago, St. Louis, Louisville, and other Ohio River and Mississippi River points, is similar to, and was held to await the final disposition of, the case of *Wilmington Tariff Asso.* v. *Cincinnati, P. & V. R. Co.* 9 I. C. C. Rep. 118, in which proceeding the Commission entered an order requiring correction of rates from the same points to Wilmington, N. C., but such order the United States circuit court declined to enforce. During the present year the rates from Chicago to Ohio River crossings have been materially reduced on shipments destined to south-eastern points, resulting in reduction of through rates from Chicago to Charleston and Wilmington. *Held,* that in view of the decision of the circuit court in the *Wilmington Case,* no enforceable order of relief can be predicated upon the facts shown in this case, and the complaint must be dismissed. *Bureau of Freight & Transportation of Charleston, S. C.* v. *Norfolk & W. R. Co.* 235.

62. Defendant's rates from Memphis to local points in Arkansas are

in many instances unreasonably high and should be reduced. *Re Freight Rates between Memphis and Points in Arkansas*, 180.

63. The Evansville & Terre Haute Railroad Company having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom. *T. M. Kehoe & Co.* v. *Evansville & T. H. R. Co.* 172.

64. While the Commission does not decide that one and one half times first class rates for sectional bookcases are reasonable, they do hold that the evidence submitted is not sufficient to show such unreasonableness. *Globe-Wernicke Co.* v. *Baltimore & O. S. W. R. Co.* 156.

65. Defendants' rates on reconsignment of hay from warehouses in East St. Louis to points south of the Ohio River, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.

65a. Upon the evidence as presented it does not appear that a rate of 62 cents per hundred pounds on "wool in the grease" from Philadelphia, Pa., to Ft. Wayne, Ind., is unreasonable. *Weil* v. *Pennsylvania R. Co.* 627.

65b. The advances in freight rates upon lumber from Dalton, Ga., to points in Virginia on the Norfolk and Western lines, between Bristol, Tenn., and Roanoke, Va., and between Bluefield W. Va., and Kenova. W. Va., which were made in 1901 and 1903, are unreasonable and unjust, and the rates should not exceed those in force before the advances were made effective. *Farrar* v. *Southern R. Co.* 640.

65c. The rate per ton per mile is not always the measure of a reasonable rate, as that measure, rigidly applied, would make distance alone the gauge for transportation charges; but it affords a valuable basis of comparison for relative rate burdens. *Id.*

65d. The rate of $1.75 per ton on anthracite coal and $1.40 per ton on bituminous coal from Superior, Wis., to Hastings, Minn., are unreasonably high, and should not exceed $1.50 per ton on anthracite and $1.25 per ton on bituminous coal. *Hastings Malting Co.* v. *Chicago, M. & St. P. R. Co.* 675.

65e. It may often happen that a single rate out of an entire system of rates may, when examined by itself, appear to be unreasonable, even though, when considered as a part of the whole system, it is justifiable. To reduce this single rate would perhaps disarrange the entire system of

rates in effect, and in a case of this sort the Commission does not feel that it should interfere until strong reasons for such interference are presented. *Id.*

65f. Complainant shipped thirteen carloads of beer between January 20, 1901, and March 4, 1902, as through shipments over defendants' lines, from Milwaukee, Wis., to Woodward, Okla., upon eight carloads of which he was charged a rate of 73 cents per one hundred pounds, and upon five carloads 75 cents; whereas during the time of such shipments defendants' rates on beer from Milwaukee to Oklahoma City, Okla., more distant than Woodward, were only 53 cents per one hundred pounds. It appears that the rate to Woodward was 53 cents in 1892 and up to March 1, 1899, while the rate to Oklahoma City was 76 cents in 1892, which was reduced in 1893 to 53 cents, and so continued to 1899; and it also appears that on April 9, 1902, defendants reduced such rates to Woodward to 53 cents, where they have ever since remained. *Held,* That the rates charged upon complainant's shipments were unjust and unreasonable to the extent of $715.05, and that complainant is entitled to reparation in that amount. *Cutter* v. *Atchison, T. & S. F. R. Co.* 689.

REFRIGERATION RATES.

66. The carriers having reduced their rates for refrigeration charges, and the Commission being without authority to fix rates for the future, an order will not be made at this time. *Re Charges for Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette & Michigan Central Railroads,* 129.

67. The Pere Marquette Railroad Company, while under contract to continue its use of Armour cars during the present season, has made reductions in its refrigeration charges amounting to from 15 to 30 per cent, to apply during this season, and has filed a statement with the Commission that it intends for the season of 1906 to purchase or lease its own equipment, and also furnish refrigeration at $2.50 per ton for the ice used in transit. *Id.*

68. The Michigan Central Railroad Company has established for the present season the reasonable charge of $2.50 per ton for ice actually used. *Id.*

69. A reasonable refrigeration charge on Michigan fruit shipped to interstate destinations from points in Michigan, when based upon the ice actually used, would be $2.50 per ton. *Id.*

70. It is not within the province of the Commission to prescribe the method or kind of refrigeration charges which shall be adopted by the carrier. *Id.*

71. Refrigeration, being incumbent upon the carrier as part of the transportation, the charge for that service stands like any other charge for transportation. It is the duty of the carrier to publish, file with the Commission, and observe its refrigeration charges; and the Commission has the same jurisdiction to inquire into the justi e and reasonableness of such charges as of any other charge for the transportation of passengers or property. *Id.*

SECOND-HAND GOODS.

72. Whether the rate on a second-hand dynamo shipped from the electric light station to the repair shop should be lower than is charged upon either a new or a second-hand dynamo sent to the station for use, is a question of policy for the railways; and this Commission cannot say that it is unjust or unreasonable to exact the same charge for the new and the second-hand dynamo. *National Machinery & W. Co.* v. *Pittsburg, C. C. & St. L. R. Co.* 581.

STOCK YARDS.

73. Where the live-stock rates to Chicago participated in by defendants constitute a reasonable compensation for the services performed, including delivery at the Union Stock Yards in Chicago, the imposition of a terminal charge of $2 per car is unreasonable. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

THROUGH RATES.

74. There are two routes over which coal may be shipped from the Thacker District, in West Virginia, to Alexandria, Ind.; one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N. & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., eight carloads of coal from the Thacker District, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. *Held*, that the rate charged is not shown to have been unreasonable, and that, in view of their published tariff, the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line. *J. J. Marley & Son* v. *Norfolk & W. R. Co.* 616.

75. The rail lines centering in New York and running westerly therefrom refuse, for stated business reasons, to make any joint rating arrangement with the Enterprise Transportation Company, a steamboat line plying between Fall River and other New England points and New York city, and in competition with the Fall River line of the New England Navigation Company, which is owned and operated by the New York, New Haven, and Hartford Railroad Company. The Fall River line may, by reducing rates on local traffic, force out of business the Enterprise Transportation Company, while obtaining a lucrative and supporting business from through traffic, and, upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public, and this existence may depend upon its right to engage in through business. By reason of want of power to grant any relief, the

Commission expresses no opinion as to whether the through routing arrangement should be extended to the Enterprise Company; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail and water carriers. *Re Alleged Unlawful Discrimination against the Enterprise Transp. Co.* 587.

76. There is no competitive relation between petroleum and its products on the one hand, and other articles of traffic on the other; and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. *Fred G. Clark Co.* v. *Lake Shore & M. S. R. Co.* 558.

77. The Act to regulate commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable, and the general shipping situation is such as to work a practical monoply in favor of the Standard Oil Company, that relief cannot be afforded by the Commission, and the complaint must be dismissed. *Id.*

78. Under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case: and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect. *Griffin Grocery Co.* v. *Southern R. Co.* 522.

79. The result of the excessive rate on cotton-piece goods between the Missouri River and Denver, and the application of full locals in making up the through combination rate to New York, Boston, and other eastern points taking the same rate to Denver, is to make the through rate to Denver excessive; and such rate to Denver, to be reasonable, should not exceed $1.50 per hundred pounds. *Kindel* v. *Boston & A. R. Co.* 495.

80. The application of combined local charges to a long-distance shipment places a wrongful burden upon the shipper. *Id.*

81. Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense the measure of the value of the services: but that situation does not justify the carriage of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. *Id.*

82. The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportion of through rates. *St. Louis Hay & Grain Co.* v. *Illinois Cent. R. Co.* 486.

83. Defendant carries coal to Baltimore destined finally to "points outside the Capes" (largely to New England seaboard points), and shipments of the same coal may also be made to Norfolk, an Atlantic seaport. The rate to Baltimore on coal reshipped to "outside the Capes" points is forced by the competition of lines from other mines, and under such rate defendant secures a large annual tonnage via its line to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the Capes be regarded as through shipments, on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the Capes; but if this coal is all purely local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. *City Gas Company* v. *Baltimore & O. R. Co.* 371.

84. The St. Louis S. W. R. Co. should not be required to make through rates via Memphis merely because it has established through rates from more southerly stations, Kendalls and points south via Gale or Thebes, Cairo or East St. Louis. *Re Freight Rates between Memphis and Points in Arkansas*, 180.

85. The Evansville & Terre Haute Railroad Company having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom. *T. M. Kehoe & Co.* v. *Evansville & T. H. R. Co.* 172.

86. A railway company, stage transportation company, and a hotel association which furnishes accommodations to passengers are not competent in law to form through rates and establish joint rates as provided in section 6 of the Act to regulate commerce; and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under that Act. *Wylie* v. *Northern P. R. Co.* 145.

87. Defendants' joint rate of 90 cents per ton on bituminous coal from Norwood N. Y. to Montpelier, Vt., when intended for "railroad supply," and their combination rate of $1.85 per ton, applied on such coal carried between the same points and used for manufacturing or any other industrial or domestic use, constitute unlawful discrimination. *Capital City Gas Co.* v. *Central Vermont R. Co.* 104.

88. The phrase "under substantially similar circumstances and conditions," in section 2 of the Act to regulate commerce, refers to the matter of carriage, and it is not permissible, under that section, for two or more carriers to establish a joint through rate less than the sum of their locals, which is applicable only to a particular shipper or class of shippers, while denying such lower rate to other shippers of like traffic between the same points of origin and destination. *Id.*

RECONSIGNMENT.

1. Although shippers cannot compel carriers to stop a commodity in transit for treatment or reconsignment, the carriers in granting such a privilege must not discriminate. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.

2. In allowing the privilege of reconsigning hay from East St. Louis to southern destinations, the defendants are entitled to charge for such privilege what it actually costs them. *Id.*

3. Defendants' rates on reconsignment of hay from warehouses in East St. Louis to points south of the Ohio River, amounting to 2 cents more than their proportional rate from East St. Louis on through shipments, are unjust and unreasonable. *Id.*

REFRIGERATOR CARS.

1. Railroad companies are required at common law to furnish suitable facilities for the conduct of the business in which they engage, and it follows that the respondent railroad companies, holding themselves out as carriers of perishable fruit, must provide the necessary refrigerator cars for the transportation of that traffic. *Re Changes for the Transportation and Refrigeration of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads*, 129.

2. Icing is not a mere incident to the transportation service, but is a part of the service itself; and a railroad company which holds itself out as a carrier of a commodity which can only move under refrigeration is in duty bound to furnish that refrigeration. *Id.*

3. Where a railroad company insists that ice shall be supplied only by the party whom it appoints, and where it collects from the shipper and passes over to such party the compensation for that service, it must stand responsible for the refrigeration as for any other part of the transportation. *Id.*

4. Refrigeration, being incumbent upon the carrier as part of the transportation, the charge for that service stands like any other charge for transportation. It is the duty of the carrier to publish, file with the Commission, and observe its refrigeration charges: and the Commission has the same jurisdiction to inquire into the justice and reasonableness of such charges as of any other charge for the transportation of passengers or property. *Id.*

5. It is not within the province of the Commission to prescribe the

method or kind of refrigeration charges which shall be adopted by the carrier. *Id.*

6. A reasonable refrigeration charge on Michigan fruit shipped to interstate destinations from points in Michigan, when based upon the ice actually used, would be $2.50 per ton. *Id.*

7. The Michigan Central Railroad Company has established for the present season the reasonable charge of $2.50 per ton for ice actually used. *Id.*

8. The Pere Marquette Railroad Company while under contract to continue its use of Armour cars during the present season, has made reductions in its refrigeration charges amounting to from 15 to 30 per cent, to apply during this season, and has filed a statement with the Commission that it intends for the season of 1906 to purchase or lease its own equipment, and also furnish refrigeration at $2.50 per ton for the ice used in transit. *Id.*

REPARATION.

1. Upon two carloads of hay shipped about May 8, 1902, from Pataskala, O., one to Wilmington, N. C., and the other to Greenville, N. C., it appears that the Wilmington shipment was overcharged 1 cent per hundred pounds, and that on the Greenville shipment the rate under published tariffs should have been 30 cents per hundred pounds, instead of a higher rate claimed for the defense to have been 30½ cents and by the complainant to have been 36 cents, the proof not indicating definitely what was actually charged. *Held*, that the findings show a basis for adjustment and refund which should be made, and that the case be held open for further proof and order if that course should become necessary. *Dewey Bros. Co.* v. *Baltimore & O. R. Co.* 475.

2. Where a carrier, contrary to positive instructions from the shipper, routes a car by an indirect and expensive route, or, without any instructions, sends the car by a longer route so as to burden the shipper with needless expense, such action is prima facie unjust and unreasonable, and constitutes a fair basis for an order of reparation. *Dewey Bros. Co.* v. *Baltimore & O. R. Co.* 481.

3. The carrier is not obliged to forward by a cheaper route where he follows the instruction given by the shipper, and an order in favor of the complaining shipper cannot be issued where the testimony does not indicate what instructions were actually given. *Id.*

4. The Commission is of opinion that, under circumstances and conditions shown to exist in this transaction, substantial justice will be satisfied with the establishment of a reasonable rate, and that an order for reparation is not required. *Kindel* v. *New York, N. H. & H. R. Co.* 514.

5. Complainants are entitled to reparation for excessive rates on the shipments complained of. *Hoerr* v. *Chicago, M. & St. P. R. Co.* 547.

6. Complainant awarded reparation upon ground that milling-in-transit rate was excessive. *J. W. Moran & Son* v. *Missouri P. R. Co.* 598.

7. Complainants allowed reparation for conceded erroneous charges on two carloads of oak lumber. *George M. Spiegle & Co.* v. *Cheasapeake & O. R. Co.* 367.

8. Case retained for further proceedings in the matter of reparation, where the terminal charge imposed had been unreasonable. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

9. Complainants are entitled to reparation on a shipment of a carload of hay carried from Johnstown, Ind. to Charleston, S. C., amounting to $4.36 from the E. & T. R. and $5.97 as admitted overcharge collected by the Georgia R. on the same shipment. *T. M. Kehoe & Co.* v. *Evansville & T. H. R. Co.* 172.

10. A case before the Commission involving alleged discrimination in furnishing cars, and demanding reparation, is not barred, under section 9 of the Act, by the previous institution in the State court of a suit for damages between the same parties, based on such discrimination. *Gallogly* v. *Cincinnati, H. & D. R. Co.* 1.

11. Complainant is entitled to reparation where defendants' rates on reconsignment of hay from warehouses in East St. Louis to points south of the Ohio River have been unjust and unreasonable. *St. Louis Hay & Grain Co.* v. *Mobile & O. R. Co.* 90.

12. Reparation allowed complainant where defendants' rates unjustly discriminated against complainant. *City Gas Co.* v. *Baltimore & O. R. Co.* 371.

13. Reparation awarded in the sum of $200 for unjustly discriminating against complainant in furnishing cars for hay and grain shipments. *Eaton* v. *Cincinnati, H. & D. R. Co.* 619.

14. Reparation denied because of insufficient proofs. *Farrar* v. *Southern R. Co.* 640.

RICE GRITS.

Rates on. *Re Rates on Corn and Corn Products from Missouri River Points to Points in Washington, Oregon, and California,* 212, 215, 216.

SAFETY APPLIANCE ACT.

1. The manifest purpose of the amended safety appliance law is that all freight cars shall be equipped with air-brakes, and that all brakes shall be used and operated; and such condition is necessary to the safety of both railway employees and the traveling public, besides facilitating traffic movement, and resulting in the handling of traffic with greater economy. Increasing the minimum percentage of air-braked cars in trains from 50 to 75 per cent would result in the earlier operation of trains fully equipped with air-brakes, and accelerate the removal from service of old and comparatively unsafe cars now unequipped with that appliance; but under the present public demand the use of every available car is required to move the unusual volume of traffic now offered, and ordering such increased percentage into immediate effect would hamper railway operations and impose severe hardship upon shippers and

the general public. After due notice and full hearing, *Held*, that the minimum percentage of air-braked freight cars in trains on railroads used in interstate commerce shall stand increased to 75 per cent on and after August 1, 1906. *Re Proposed Increase in the Minimum Percentage of Cars in Trains Required to be Operated with Power or Train Brakes*, 429.

DISTRICT COURT DECISION.

2. The car involved in this case was hauled from one of defendant's yards to another, the movement being preparatory to going upon the main line toward destination in another state. *Held*, that this car was used in interstate commerce within the meaning of the act of March 2, 1893, as amended. *United States* v. *Pittsburgh, C. C. & St. L. R. Co.* (U. S. Dist. Ct. S. D. O.) 696.

3. The safety appliance acts apply to cars while being used in a switching movement. *Id.*

4. In an action brought jointly against two or more railroad companies to recover the statutory penalty specified in the safety appliance acts, judgment may be rendered against any one of the defendants when the proof shows that such defendant has violated the statute. *United States* v. *Chicago, P. & St. L. R. Co.* (U. S. Dist. Ct. S. D. Ill.) 698.

5. When a railroad company hauls over its line a car having a defect covered by the safety appliance acts it is liable for the penalty provided by said statutes. *Id.*

SCHEDULES OR TARIFFS.

1. While the Commission does not decide that one and one half times first class rates for sectional bookcases are reasonable, they do hold that the evidence submitted is not sufficient to show unreasonableness. *Globe-Wernicke Co.* v. *Baltimore & O. S. W. R. Co.* 156.

2. While there is much reason to believe that sectional bookcases might properly be placed in the first class by the Official Classification Committee, the same as has been done by the Southern and Western Classification Committees, it does not follow, however, that the classification fixed by the Committee, of one and one half times first class rates for all bookcases, is an unlawful discrimination against the sectional varieties. *Id.*

3. A railway company, stage transportation company, and a hotel association which furnishes accommodations to passengers are not competent in law to form through rates and establish joint rates as provided in section 6 of the Act to Regulate Commerce, and the circular or tariff under which the rates and tickets in question are provided cannot be regarded as a joint tariff established by connecting carriers under that Act. *Wylie* v. *Northern P. R. Co.* 145.

4. The charge for refrigeration stands like any other charge for transportation, and it is the duty of the carrier to publish and file the same with the Commission. *Re Charges for Transportation and Refrigeration*

of Fruit Shipped from Points on the Pere Marquette and Michigan Central Railroads, 129.

5. The Evansville & Terre Haute Railroad Company having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom. *T. M. Kehoe & Co.* v. *Evansville & T. H. R. Co.* 172.

6. Whether the rate on a second-hand dynamo shipped from the electric light station to the repair shop should be lower than is charged upon either a new or second-hand dynamo sent to the station for use, is a question of policy for the railways: and this Commission cannot say that it is unjust or unreasonable to exact the same charge for the new and the second-hand dynamo. *National Machinery & W. Co.* v. *Pittsburg, C. C. & St. L. R. Co.* 581.

7. It is manifestly contrary to law, and leads to confusion, for one line of rates to be retained in published tariffs while others are in fact used on actual shipments; and so long as carriers in Southern Classification territory deem it necessary to retain class F in their classifications, and publish rates applicable thereto, including flour in barrels, and at the same time publish commodity rates on the same article carried in sacks, there should be uniformly a just relation in such rates. *S. J. & S. Cannon* v. *Mobile & O. R. Co.* 537.

8. Under the conditions now governing the manufacture and use of the "Scheidel outfit," such outfit is properly classified by defendant with the x-ray and medical or scientific apparatus as double first-class, and is not entitled to a first-class rating with dynamos, transformers, and other electrical machinery; but no opinion is expressed upon the justice of the first class rate for such machinery. *W. Scheidel & Co.* v. *Chicago & N. W. R. Co.* 532.

9. A third-class rate for leather scraps in less than carloads is sufficiently high, and defendant's present classification and rating for that traffic is unjust and unreasonable. *Newman* v. *New York C. & H. R. R. Co.* 517.

10. No aclssification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes, with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification. *Planters Compress Co.* v. *Cleveland, C. C. & St. L. R. Co.* 382.

11. The defendant's rates from Memphis to local points in Arkansas

being in many instances unreasonably high, defendant is required to submit within thirty days a revised schedule and put the same in force as provided by law. *Re Freight Rates between Memphis and Points in Arkansas*, 180.

12. Old dynamos which have become merely combinations of copper, brass, and iron scrap, and are valuable only as junk, should, under suitable regulations fixed by the carrier, be given the rating for junk, basing the same on the highest class metal used in the construction. *National Machinery & W. Co.* v. *Pittsburg, C. C. & St. L. R. Co.* 581.

SCHEIDEL OUTFIT.

Classification of. *W. Scheidel & Co.* v. *Chicago & N. W. R. Co.* 532.

SECOND-HAND GOODS.

Rates on. *National Machinery & W. Co.* v. *Pittsburg, C. C. & St. L. R. Co.* 581.

SECTIONAL BOOKCASES.

Rates on. *Globe-Wernicke Co.* v. *Baltimore & O. S. W. R. Co.* 159, 160.

SHEEP.

Rates on. *Re Freight Rates between Memphis and Points in Arkansas*, 193, 194.

SHEETING.

Rates on. *Kindel* v. *Boston & A. R. Co.* 499.

SIDETRACK CONNECTIONS.

The enactment by Congress, in section 3 of the Act to regulate commerce, that the carriers affected thereby shall not subject persons, localities, or descriptions of traffic to undue prejudice or unreasonable disadvantage, or give any undue or unreasonable preference or advantage to persons, localities, or kinds of traffic, in any respect whatsoever, applies to discrimination in facilities or instrumentalities of shipment or carriage; and while the Commission has no authority to order a carrier to put in sidetrack connections, or to prescribe the terms or conditions relating to the construction of such connections, its jurisdiction does extend to any case of wrongful prejudice resulting from discrimination in the provision of such facilities or instrumentalities of shipment or carriage, including sidetrack connections. *Red Rock Fuel Co.* v. *Baltimore & O. R. Co.* 438.

STAGE TRANSPORTATION.

1. It is the duty of the defendant railway company to so conduct and control its operations relating to the transportation of passengers to Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner, and elsewhere, to select the

stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. *Wylie* v. *Northern P. R. Co.* 145.

2. An arrangement between a railway company, stage transportation company, and a hotel association, under which coupon tickets are issued, covering transportation and hotel charges, constitutes and effects an undue and unreasonable preference and advantage to the transportation company and hotel association, and subjects complainant, who operates a stage line, as well as the passengers, to undue and unreasonable prejudice and disadvantage. *Id.*

STATE RAILROAD COMMISSION.

As Duluth, Minn., has the same coal rates to Hastings as to Superior, Wis., which latter rates are excessive, the railroad commission of Minnesota has ample authority to control the situation, and complainant should first apply to that commission. *Hastings Malting Co.* v. *Chicago, M. & St. P. R. Co.* 675.

STATES.

A state has jurisdiction to enact that carriers of coal therein shall provide track connections with all mines within its borders, but the power of the State in that respect arises from its authority over State commerce, and does not constitute any limitation upon the exclusive power of Congress to regulate interstate commerce. *Red Rock Fuel Co.* v. *Baltimore & O. R. Co.* 438.

STOCK YARDS.

1. The present terminal charge for delivery of live stock at the Union Stock Yards in Chicago, amounting to about $2 per car, is unjust and unreasonable; and a reasonable charge would be $1 per car for such terminal services. *Cattle Raisers' Asso. of Texas* v. *Missouri, K. & T. R. Co.* 296.

2. Where the live-stock rates to Chicago participated in by defendants constitute a reasonible compensation for the services performed, including delivery at the Union Stock Yards in Chicago, the imposition of a terminal charge of $2 per car is unreasonable. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

3. Outside the excluded territory a terminal charge for delivery to the Union Stock Yards in Chicago of $1 per car is reasonable. *Id.*

4. A railroad company may maintain its live-stock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition, the depot of defendants, is immaterial, for they were, and still are, in fact, the point to which the stock is transported and unloaded under the shipping contract of defendants. *Id.*

5. Excluding the territory covered by the reduction of 1896, livestock

rates to Chicago participated in by defendants were, on May 31, 1894, reasonable compensation for the services performed, including delivery at the Union Stock Yards in Chicago. At all times since that date such rates have been, and now are, sufficiently high to include a delivery at the stock yards as such delivery was made prior to June 1, 1894. *Id.*

TABLES.

Average daily compensation of railway employees. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 247.

Showing maintenance of equipment per mile of line. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 258.

Showing maintenance of way and structures per mile of line. *Id.*

Showing revenue per ton per mile in cents. *Id.*

Showing per cent of operating expenses to gross earnings. *Id.*

Showing net earnings per mile of line. *Id.*

Showing operating expenses per mile of line, *Id.*

Showing gross earnings per mile of line. *Id.*

Showing volume and density of traffic, economies in car and train loading. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 253.

Showing average number of tons carried one mile per dollar of compensation paid to railway employees. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 249.

Total capitalization per mile of line. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 258.

General expenses per mile of line. *Id.*

Funded debt per mile of line. *Id.*

Capital stock per mile of line. *Id.*

Total mileage operated. *Id.*

Average number of tons carried one mile per day's work performed by railroad employees. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 247.

TERMINAL CHARGES.

1. Where the live-stock rates to Chicago participated in by defendants constitute a reasonable compensation for the services performed, including delivery at the Union Stock Yards in Chicago, the imposition of a terminal charge of $2 per car is unreasonable. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.

2. The present terminal charge for delivery of live stock at the Union Stock Yards in Chicago, amounting to about $2 per car, is unjust and unreasonable; and a reasonable charge would be $1 per car for such terminal services. *Cattle Raisers' Asso. of Texas* v. *Missouri, K. & T. R. Co.* 296.

TERMINAL FACILITIES.

There is no such competitive relation between fresh meat and, for ex-

ample, fresh fruit, that it is of necessity undue discrimination to accord a privilege to the one commodity which is refused to the other. ***Miner*** v. *New York, N. H. & H. R. Co.* 422.

THROUGH RATES.

1. The Evansville & Terre Haute Railroad Company having, instead of making a through rate from points in Indiana to destinations south of the Ohio River, established a local rate on hay of 8 cents per hundred pounds to Evansville, and a proportional of 6½ cents to Evansville when the shipment is billed through to a specified destination, acts unreasonably and unjustly in insisting upon the billing of these shipments to a specified destination in order to secure application of the lower proportional rate, while it declines to assume responsibility for such billing, and does not post in its stations the tariffs from which the shipper can himself ascertain the rate at which the shipment should be billed. While the proportional rate is kept in force it is reasonable and just that these shipments shall be billed to Evansville in care of the road leading southerly therefrom. ***T. M. Kehoe & Co.*** v. ***Evansville & T. H. R. Co.*** 172.

2. The St. Louis S. W. R. Co. should not be required to make through rates via Memphis merely because it has established through rates from more southerly stations, Kendalls and points south via Gale or Thebes, Cairo or East St. Louis. ***Re Freight Rates between Memphis and Points in Arkansas***, 180.

3. There are two routes over which coal may be shipped from the Thacker District, in West Virginia, to Alexandria, Ind.; one by the N. & W. and C. C. C. & St. L., the shorter line, and one by the N & W., H. V., and L. E. & W. Complainants in 1903 had shipped to them at Alexandria, Ind., eight car-loads of coal from the Thacker District, W. Va., over the latter route, and by that line the published rate was $1.90 per ton, while over the other route the rate was $1.65 per ton. November 26, 1903, the rate by the route used was reduced to $1.65, and later the other line lowered its rate to $1.55. Complainants, acting on behalf of the consignor, demanded reparation. The evidence relates solely to the rate itself, and the fact that a lower rate was in force over a competing short line. ***Held***, that the rate charged is not shown to have been unreasonable. and that, in view of their published tariff, the carriers in the through line over which the coal was carried could not lawfully apply the lower rate in effect over the competing line. ***J. J. Marley & Son*** v. ***Norfolk & W. R. Co.*** 616.

4. The rail lines centering in New York and running westerly therefrom refuse, for stated business reasons, to make any joint rating arrangement with the Enterprise Transportation Company, a steamboat line plying between Fall River and other New England points and New York city, and in competition with the Fall River line of the New England Navigation Company, which is owned and operated by the New York, New Haven, and Hartford Railroad Company. The Fall River line may, by reducing rates on local traffic, force out of business the Enterprise

Transportation Company, while obtaining a lucrative and supporting business from through traffic, and, upon disappearance of such competition, restore the former charges. The existence of the Enterprise Transportation Company as a competitive factor is of distinct value to the public, and its existence may depend upon its right to engage in through business. By reason of want of power to grant any relief, the Commission expresses no opinion as to whether the through routing arrangement should be extended to the Enterprise Company; but if the public is to have the legitimate benefit of water competition, it is evident that authority should be provided to establish through routes between rail and water carriers. *Re Alleged Unlawful Discrimination against the Enterprise Transp. Co.* 587.

5. There is no competitive relation between petroleum and its products on the one hand and other articles of traffic on the other, and the failure of the New Haven Company to provide joint rates on petroleum and its products, while maintaining joint rates on other traffic, does not constitute wrongful preference and advantage. *Fred G. Clark Co.* v. *Lake Shore & M. S. R. Co.* 558.

6. The act to regulate commerce does not authorize the Commission to compel the establishment of joint rates by connecting carriers, nor to prescribe the divisions of joint rates or the conditions of interchange in case the connecting carriers fail to agree in respect thereto; and it follows, notwithstanding the combination rates complained of are unjust and unreasonable, and the general shipping situation is such as to work a practical monopoly in favor of the Standard Oil Company, that relief cannot be afforded by the Commission, and the complaint must be dismissed. *Id.*

7. Under the construction of the law as announced by the courts, no undue prejudice against Griffin, or violation of the long and short haul clause, is shown in this case; and while the practice of making rates to Griffin by combining rates to Atlanta with local rates therefrom to Griffin may result in unreasonable charges, the evidence in this case is insufficient upon which to base a conclusion in that respect. *Griffin Grocery Co.* v. *Southern R. Co.* 522.

8. The result of the excessive rate on Cotton-piece goods between the Missouri River and Denver, and the application of full locals in making up the through combination rate to New York, Boston, and other eastern points taking the same rate to Denver, is to make the through rate to Denver excessive; and such through rate to Denver, to be reasonable, should not exceed $1.50 per hundred pounds. *Kindel* v. *Boston & A. R. Co.* 495.

9. The application of combined local charges to a long-distance shipment places a wrongful burden upon the shipper. *Id.*

10. Transcontinental rates from eastern points to San Francisco are made in competition with water rates, and are in no sense the measure of the value of the services; but that situation does not justify the carriage

of goods to San Francisco at a loss, thereby placing additional burdens on other traffic. *Id.*

11. The fact that through rates are less than the sum of in and out rates is not of itself a valid ground of objection, nor is it unlawful for defendants to maintain reconsignment rates which are higher in some cases than their proportion of through rates. *St. Louis Hay & Grain Co.* v. *Illinois Cent. R. Co.* 486.

12. The fact that the reconsignment rate is sometimes the same as the proportion of the through rate does not warrant an inference of illegal conduct, or support a charge of unjust discrimination. *Id.*

13. Defendant carries coal to Baltimore destined finally to "points outside the Capes" (largely to New England seaboard points), and shipments of the same coal may also be made to Norfolk, an Atlantic seaport. The rate to Baltimore on coal reshipped to "outside the Capes" points is forced by the competition of lines from other mines, and under such rate defendant secures a large annual tonnage via its line to the port of Baltimore. The rate to Baltimore on coal for Norfolk is the local rate to Baltimore. If the shipments to Norfolk and points outside the Capes be regarded as through shipments, on what are in essence through rates, the competition stated might justify a higher rate to Baltimore when the final destination is Norfolk than when it is a point outside the capes; but if this coal is all purely local to Baltimore, there is much doubt whether, as a matter of law, defendant can charge for the haul to Baltimore more in one case than in the other. *City Gas Co.* v. *Baltimore & O. R. Co.* 371.

THROUGH ROUTE.

1. The carrier is not obliged to forward by a cheaper route where he follows the instruction given by the shipper, and an order in favor of the complaining shipper cannot be issued where the testimony does not indicate what instructions were actually given. *Dewey Bros. Co.* v. *Baltimore & O. R. Co.* 481.

2. Where a carrier, contrary to positive instructions from the shipper, routes a car by an indirect and expensive route, or, without any instructions, sends the car by the longer route so as to burden the shipper with needless expense, such action is prima facie unjust and unreasonable, and constitutes a fair basis for an order of reparation. *Id.*

TICKING.

Rates on. *Kindel* v. *Boston & A. R. Co.* 499.

TIES.

Rates on. *Re Class & Commodity Rates from St. Louis to Texas Common Points*, 242.

TRACKAGE CHARGE.

The trackage charge to be paid by defendants to the stock yards company in Chicago is fairly established at $1 per car. *Cattle Raisers' Asso. of Texas* v. *Chicago, B. & Q. R. Co.* 277.